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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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COMMISSIONER  
JIM IRVIN  
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MARC SPITZER  
COMMISSIONER

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S LEGAL BRIEF ON IMPASSE ISSUES  
RELATING TO GENERAL TERMS AND CONDITIONS**

Arizona Corporation Commission

**DOCKETED**

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## I. INTRODUCTION

Pursuant to the schedule set by the Commission, Qwest Corporation ("Qwest") submits its Legal Brief on Impasse Issues Relating to General Terms and Conditions contained in its Statement of Generally Available Terms and Conditions ("SGAT"). As set forth below, Qwest's proposals for general terms and conditions to be included in the SGAT are reasonable and well-supported in existing practice and law. Accordingly, the Commission should adopt Qwest's proposals on the general terms and conditions issues that are at impasse.

The parties have had several meaningful opportunities in this proceeding and others to present their views on all of the checklist items identified under section 271 of the Telecommunications Act of 1996 ("Act"). Although the SGAT's general terms and conditions do not involve any specific checklist item under the Act, Qwest has agreed to work with the competitive local exchange carriers ("CLECs") participating in this workshop in an effort to achieve consensus on the general terms and conditions.

Qwest appreciates that general terms and conditions play a role in achieving the appropriate balance of risk between the parties to an interconnection agreement. However, as set forth below and demonstrated in the record here, many of the CLECs' proposals do not achieve an appropriate balance, but rather seek to improperly tip the scales in their favor. In many respects, the proposals of the CLECs represent attempts by strategic competitors to control Qwest's business operations in a manner not required nor ever contemplated by the Act. Qwest has every intention of standing behind the services that it provides under the SGAT and has substantial inducements to do so, including Performance Indicator Definitions ("PIDs"), Quality Performance Assurance Plans ("QPAPs"), and the possibility of the Federal Communications Commission reexamining Qwest's entry into the in-region long distance market under section 272 of the Act.

Qwest's proposed SGAT provisions, many of which incorporate the proposals of AT&T, XO and other CLECs, provide a fair and balanced means of resolving disputes between the parties, amending interconnection agreements, and complying with the Act's pick-and-choose requirements. Qwest proposed provisions not only accommodate future changes in law but significantly accelerate access by CLECs to new services and products offered by Qwest. As evidenced by the redlined version of the "frozen" SGAT filed by Qwest on July 25, 2001, Qwest has made an enormous number of changes, both large and small, in response to the CLECs' comments.

In considering the positions of the parties, it is important to remember what the SGAT is and what it is not. The SGAT is Qwest's standard contract offering, intended to accommodate those CLECs who choose to forego the time and expense associated with negotiating an individual interconnection agreement addressing their individual requirements and CLECs that desire to pick and choose portions of the SGAT into their existing interconnection agreement. Even after the SGAT has been adopted by this Commission, CLECs will remain free to negotiate a specific agreement if they wish, as many of the larger CLECs undoubtedly will do.

As they have in connection with previous workshops, the parties have been extremely successful in narrowing the issues in dispute relating to SGAT general terms and conditions. This brief addresses those relatively few issues that remain open. Qwest's SGAT must be approved if it complies with Sections 251 and 252(d) of the Act and "other requirements of State law."<sup>1</sup> In many instances, Qwest has agreed to modifications that were unnecessary for compliance purposes, but that avoided disputes or promoted the competitive goals of CLECs. Although disputes remain, most of these issues relate to the mechanics of Qwest's SGAT as opposed to its compliance with Section 271 of the Act. Because Section 271 proceedings are not the proper forum to create new requirements under the Act, the Commission should approve

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<sup>1</sup> See 47 U.S.C. § 252(f)(2).

Qwest's language if it comports with the Act, FCC regulations, and applicable state law even if the CLECs favor slightly different wording.<sup>2</sup>

## **II. GENERAL TERMS AND CONDITIONS IMPASSE ISSUES**

### **A. Section 1.7.2 – AT&T's Proposal Regarding "Comparable Rates, Terms and Conditions" Is Unnecessary and Unwarranted and Should Be Rejected.**

During the workshop and after all the testimony had been filed and all the relevant issues had been identified, AT&T proposed, for the first time, section 1.7.2. By this section, AT&T would obligate Qwest to offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services are comparable. AT&T offered section 1.7.2 because it fears that Qwest will unilaterally attach unreasonable rates, terms and conditions to Qwest's new products and services. As part of section 1.7.2, AT&T also tried to create a presumption of comparability, meaning that if a party disputes the similarity between new and existing products and services, Qwest would bear the burden of demonstrating that the products and services are not comparable.<sup>3</sup> The Commission should reject AT&T's proposed provision because it is unnecessary, unwarranted and will only lead to confusion and delay.

#### **1. Proposed Section 1.7.2 Is Unnecessary and Unwarranted.**

Section 1.7.2 is unnecessary and unwarranted for at least three reasons. First, the SGAT already contains sufficient safeguards against Qwest's imposition of unreasonable rates, terms and conditions on new products and services. Second, this Commission will insure that any

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<sup>2</sup> See Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Dkt. No. 00-65, FCC 00-238 ¶¶ 22-26 (June 30, 2000) ("SBC Texas Order").

<sup>3</sup> See *id.* at 37.

rates, terms and conditions offered by Qwest are reasonable. Third, Qwest has the right to establish contractual rates, terms, and conditions for its products.

**a. The SGAT Already Contains Sufficient Safeguards Against Unreasonable Rates, Terms and Conditions On New Products and Services.**

The SGAT already protects CLECs from unreasonable rates, terms and conditions on new products and services in at least two ways. First, section 5.1.6 protects CLECs by reaffirming Qwest's obligation to price new products and services in accordance with all applicable laws and regulations. Section 5.1.6 states in relevant part:

All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

By this provision, Qwest contractually obligated itself to offer new products and services in a manner that is reasonable and consistent with the law. Moreover, section 252(f)(2) of the Act requires that all SGAT rates comport with section 252(d) of the Act – the TELRIC and resale discount provisions. AT&T's section 1.7.2 is unnecessary and redundant. Qwest has already committed to offer its new products and services under reasonable rates, terms and conditions.

Second, in the SGAT Qwest commits to maintain the CICMP process, which protects CLECs by allowing them to offer input and make suggestions on Qwest's new product offerings.<sup>4</sup> Under CICMP, Qwest will notify the CLECs of all new products before it formally

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<sup>4</sup> See SGAT § 12.2.6. All references to the "SGAT" are to the SGAT "lite" attached as Exhibit A hereto and filed contemporaneously with this brief. Qwest notes that minor language changes may be appropriate to the SGAT lite to incorporate all of the agreements reached by the parties. Qwest will consult with CLECs on such changes and will incorporate them in a revised SGAT lite to be filed within the next few days. Specifically, Qwest believes that the parties are likely in agreement over SGAT language governing Revenue Protection (section 11.34) and Term of Agreement (section 5.2). Because of disrupted schedules during the past week, however, Qwest has been unable to confirm the language at

introduces them in the market.<sup>5</sup> CLECs will then be able to review and comment on the new products and raise any concerns.<sup>6</sup> If CLECs are concerned about the rates, terms or conditions of a new product, they may work with Qwest to resolve the issues. CLECs will not be caught off guard or surprised by any of the rates, terms and conditions and will have ample opportunity to dispute what they believe is inappropriate or unreasonable. The CLECs' active participation in a process in which Qwest's new product offerings are described and discussed insures that Qwest will not unilaterally attach unreasonable rates, terms and conditions to its new products and services.

**b. This Commission Will Insure That Any Rates, Terms and Conditions Offered By Qwest Are Reasonable.**

Section 1.7.2 is also unnecessary because Qwest's rates are subject to review and oversight by each individual state commission. Section 252(f)(2) of the Act mandates that commissions cannot approve an SGAT unless they specifically find that SGAT rates comply with section 252(d). Because Qwest's rates for its products and services are heavily regulated (here, specifically regulated) and subject to cost dockets, there is little chance that Qwest can

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issue and to incorporate it into the SGAT lite. Again, Qwest will confirm agreement concerning this language and will file a revised SGAT lite within the next week.

<sup>5</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38. Citations to "Tr." are to the transcripts of general terms and conditions workshop proceedings held in this docket as well as those held in Arizona on June 11-15, 2001, the Multi-State collaborative proceeding on June 25-28, 2001, and Washington on July 9-10, 2001. Because of the substantial overlap between the issues here and these other general terms and conditions proceedings, and because of the evolving nature of the issues actually in dispute, the parties agreed to "import" into the record here the records developed (transcripts and exhibits) in those workshops. See, e.g., Colorado Transcript ("CO Tr.") (8/21/01) at 105-107 (noting parties' agreement regarding record importation). Consistent with this agreement, on August 27, 2001, Qwest filed its Notice of Filing of Transcripts and Exhibits from the Colorado Workshop Regarding General Terms and Conditions. The Notice includes the exhibit numbers assigned the materials in Colorado, and Qwest used those numbers in identifying them in this brief. Finally, because the Washington proceeding is the most recent of these proceedings and, therefore, explored the most recent iteration of the parties' positions, citations to prefiled testimony is to that filed in Washington.

<sup>6</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38.

successfully impose unreasonable rates. If Qwest attempts to charge excessive amounts for its new products, this Commission would surely order Qwest to adjust its rates.

## **2. Proposed Section 1.7.2 Promotes Confusion and Delay.**

Section 1.7.2 promotes confusion and delay because it employs vague terms that are subject to multiple interpretations and adds an unnecessary layer of analysis in resolving new product disputes. Nowhere in section 1.7.2 does AT&T define the terms "comparable products and services" or "substantially the same rates, terms and conditions." Because these terms are not defined, the parties will undoubtedly dispute what is "comparable" and what is "substantially the same," thus leading to lengthy dispute resolution proceedings and delayed product offerings. Rather than promote efficiency, section 1.7.2 will only cause unnecessary delay.

Furthermore, section 1.7.2 adds an unnecessary layer of analysis in resolving disputes over the proper rates, terms and conditions. Instead of focusing on what the rates should be, section 1.7.2 focuses on whether there are comparable products. According to section 1.7.2, whenever the parties dispute the reasonableness of Qwest's rates, terms and conditions, the first inquiry is whether the new product is comparable to an existing product. Regardless of whether the products are comparable, the second inquiry examines the appropriateness of the rates, terms and conditions. For example, if the products are comparable, the parties must examine whether the rates, terms and conditions are substantially similar. If the products are not comparable, the parties must examine whether the rates, terms and conditions are appropriate and reasonable. This two-step approach is completely unnecessary. Rather than examine whether the products are comparable, the parties should consider the appropriateness of the rates, terms and conditions in the first instance. There is no reason to add another potential point of dispute when the heart of the issue can be addressed directly.

### **3. Qwest Has the Right to Establish Contractual Rates, Terms and Conditions for its Products.**

A clear understanding of and agreement to the terms and conditions associated with a new Qwest product or service is a fundamental matter of contract law.<sup>7</sup> It would be unreasonable to require Qwest, or any other provider, to offer a new product or service without prior agreement to the terms and conditions pursuant to which the product or service is offered. Nothing in the Act requires Qwest to offer a product or service to CLECs without first agreeing upon how Qwest will make it available and how CLECs will use and pay for it.

Qwest's approach is consistent with the Act, which recognizes that interconnection agreements must set forth the terms and conditions of access as between the individual parties.<sup>8</sup> The Act clearly anticipates that the rates, terms and conditions for each service will be carefully spelled out in interconnection agreements. As to rates, the Act states, "The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."<sup>9</sup> As to terms and conditions, the Act states that any "unresolved issues" shall be determined in an arbitration brought by the CLEC.<sup>10</sup>

Thus, the Act contemplates that the rates, terms and conditions of each offering shall be agreed upon and set forth in the interconnection agreement. Qwest has participated in arbitrations involving various terms and conditions of interconnection agreements pursuant to

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<sup>7</sup> See, e.g., *Farnsworth on Contracts* § 3.12 (2d ed. 1998) ("The offeror is often described as the 'master of the offer' in the sense that, since the offeror confers on the offeree the power of acceptance, the offeror has control over the scope of that power and over how it can be exercised."); 1 Corbin, *Contracts* § 64 (1963 & Supp.1980) (describing offeror as the 'master' of his offer.); *Restatement of Second Contracts* §29, Comment A (1979) ("The offeror is the master of his offer.").

<sup>8</sup> See 47 U.S.C. §252(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> See 47 U.S.C. §252(b)(2)(a)(i).

these provisions of the Act. While the SGAT is Qwest's standard contract offering for interconnection, UNEs and resale, when Qwest offers new products or services in the future, the terms and conditions pursuant to which these services are offered must be agreed to before they can be provisioned.

**B. Section 1.8 – Qwest's "Pick and Choose" Proposals Are Reasonable.**

In its prefiled testimony and the workshop, AT&T raised two issues pertaining to section 1.8. First, AT&T argued that "pick and choose" provisions should inherit the expiration dates of the interconnection agreements to which they are being imported rather than the interconnection agreements from which they are taken.<sup>11</sup> Second, AT&T contended that the term "legitimately related" needed clarification. Over one year ago, the pick and choose language was specifically negotiated between AT&T and Qwest, accepted by all parties to all states, and specifically approved by all 12 state commissions with active 271 dockets. The Commission should reject AT&T's position.

AT&T also cited anecdotal evidence of instances where Qwest supposedly acted arbitrarily in refusing to let AT&T pick and choose terms from other agreements.<sup>12</sup> Qwest, however, refuted AT&T's examples in the rebuttal testimony of Mr. Brotherson and in the workshop.<sup>13</sup> AT&T's examples, therefore, are unpersuasive and should be disregarded.

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<sup>11</sup> See Ex. 6-Qwest-82, Affidavit of Michael Hydock in Washington proceeding, dated June 7, 2001 ("Hydock WA Aff.") at 11-13.

<sup>12</sup> Ex. 6-Qwest-82 (Hydock WA Aff.) at 13-16.

<sup>13</sup> Ex. 6-Qwest-82 Rebuttal Affidavit of Larry B. Brotherson in Washington Proceeding, dated June 21, 2001 ("Brotherson WA Reb.") at 10.

**1. "Pick and Choose" Provisions Should Retain the Expiration Dates of the Original Interconnection Agreements.**

Contrary to AT&T's claims, "pick and choose" provisions that are taken from existing interconnection agreements and imported into new interconnection agreements should have coterminous expiration dates. If the original expiration dates are not retained, CLECs will be able to extend "pick and choose" provisions indefinitely. As the Facilitator in the multi-state proceeding noted during the workshop, different expiration dates would allow CLECs to "perpetuate an offering forever" by permitting one CLEC to opt into a provision and to extend its term to the expiration date of its interconnection agreement. Then, the CLEC from whom the provision was originally taken could opt into the exported "pick and choose" provision (in connection with a new interconnection agreement) and extend its term.<sup>14</sup> This circular "pick and choose" scheme could extend a provision indefinitely and, as the Facilitator stated, leave "Qwest sort of picked and choosed forever."<sup>15</sup>

A continuing SGAT provision deprives Qwest of the opportunity to respond to evolving and changing market conditions by renegotiating the specific provision when appropriate. An indefinite SGAT provision also provides a disincentive to Qwest to enter into innovative arrangements for fear that if these provisions turn out differently than expected, Qwest would be subject to these provisions forever.

The Commission should also reject AT&T's position because coterminous expiration dates are in harmony with relevant FCC decisions. In *In re Global NAPs, Inc.*, the FCC discussed the "pick and choose" provisions of the Act and noted that any language taken from an existing agreement must keep the expiration date of the original agreement.<sup>16</sup> In that case,

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<sup>14</sup> Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 87.

<sup>15</sup> *Id.*

<sup>16</sup> *In re Global NAPs, Inc.*, CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999).

Global Naps complained that Bell Atlantic-New Jersey would not allow it to opt into a 1996 interconnection agreement between Bell Atlantic—New Jersey and MFS. The issue before the FCC was whether it should preempt the New Jersey Board because of its alleged failure to take timely action on the recommendation of the arbitrator. Because the Board did eventually act, the FCC declined to do so. In making its ruling, however, the FCC made a number of comments pertinent to the issue of pick-and-choose and "opt-in" rights under section 252(i) and the implementing FCC rules (47 C.F.R. §51.809). In footnote 25, the FCC stated that there should be a streamlined process for opting-in and "[i]n such circumstances, the carrier opting-into an existing agreement takes all the terms and conditions of that agreement (or portions of the agreement), including its original expiration date." The FCC thus recognized that "pick and choose" provisions should have the same expiration date as the original interconnection agreement.

**2. Qwest's Proposed Language Regarding "Legitimately Related" Should Be Adopted.**

AT&T has questioned Qwest's use of a "case-by-case" method to determine whether a provision is "legitimately related." AT&T argued that the "legitimately related" standard should have set criteria and that Qwest must bear the burden of proof in establishing that a provision is "legitimately related."

To respond to these comments, Qwest first added language to section 1.8.2 that would require Qwest to explain its reasons for designating a provision "legitimately related." Section 1.8.2 includes the following consensus language:

In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical or other considerations.

Since the workshop, Qwest responded further to AT&T's comments by developing a definition that articulates when a provision is "legitimately related." Qwest proposes the following definition of "legitimately related" to be included in section 4.0:

"Legitimately Related" terms and conditions are those rates, terms and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

Although the vast differences between cases make it difficult to develop precise standards to determine when a provision is "legitimately related," this definition appropriately describes the scope of the term "legitimately related." This definition also properly encompasses the principles detailed in paragraph 1315 of the FCC's *First Report and Order* pertaining to "legitimately related" provisions.<sup>17</sup> Moreover, Qwest should be able to react to CLEC requests that attempt to misconstrue provisions of the SGAT to obtain a windfall. Accordingly, the definition fully satisfies AT&T's comments.

Also, the SGAT already affirmatively places the burden of proof on Qwest regarding "legitimately related" provisions. Section 1.8.1 declares, "At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related." Contrary to AT&T's complaint, there is no need to say more about Qwest's burden of proof.

**C. Section 2.1 – Qwest's Proposed Language Relating to the Most Recent Statutes, Regulations, Rules, Tariffs, etc., Should Be Adopted.**

In an effort to make clear that references in the SGAT to statutes, rules, regulations, tariffs, technical publications and the like are to the most recent versions of such documents, Qwest has proposed the following for section 2.1 of the SGAT:

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<sup>17</sup> See First Report and Order *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection Between Local Exchange Carriers and Commercial Radio Service Providers*, CC Dkt. Nos. 96-98 & 95-185, FCC 96-325 (rel. Aug. 8, 1996) ("*First Report and Order*") ¶ 1315.

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule, regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of telecommunications industry administrative or technical standards.

Importantly, this provision does not supplant the change of law provisions discussed below, and only serves to incorporate the parties' reasonable intent to reference current as opposed to superseded legal or technical authorities. To the extent that a new or updated authority is published which substantively affects the parties' relationship, section 2.2 of the SGAT will be invoked and apply.

Commission Staff in Colorado requested that the parties address the status of and their positions regarding sections 5.24 – Referenced Documents, 5.30 – Amendments, and 5.31 – Entire Agreement in connection with their briefing on section 2.1. In order to provide a complete record here in Arizona, each of these issues is addressed in turn below.

***Section 5.24 – Referenced Documents.*** Qwest's proposal for section 2.1, discussed above, adequately addresses the issues covered by section 5.24. Accordingly, as a part of its proposal for section 2.1, Qwest proposes the deletion of section 5.24. This proposal is reflected in the attached SGAT lite.

**Section 5.30 – Amendments.** The language set forth in the SGAT lite filed with this brief represents consensus language agreed to by the parties. It is unaffected by Qwest's proposed resolution of section 2.1. It should be adopted.

**Section 5.31 – Entire Agreement.** Section 5.31.1 sets forth the Agreement's merger or integration clause. This section provides:

5.31.1 This Agreement, constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

This provision is standard contract language that has been included in Qwest's interconnection agreements in identical or substantially similar form since the inception of the Act.

At the workshop held on August 21, 2001, counsel for WorldCom raised for the first time the question of whether the language of section 5.31 was appropriate given the extensive record created in the various state and multi-state proceedings. While not entirely clear, it appears that WorldCom proposes the deletion of this provision in order to allow state commissions or any other decision-making authority to look behind the actual language of the SGAT to discern the intent of the parties as reflected in the transcripts and other materials forming the record of these proceedings. Such an approach is seriously misguided.

WorldCom's approach would undermine the fundamental purpose of reducing the parties' agreement to writing under basic contract law. As the Arizona Supreme Court has long held, "[w]here two parties have made a written agreement to which they have both assented as the complete and accurate integration of that contract, evidence of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing."<sup>18</sup> Similarly, in construing the effect of a merger clause nearly identical to Qwest's proposal here,

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<sup>18</sup> *Rental Dev. Corp. of America v. Rubenstein Constr. Co.*, 96 Ariz. 133, 136, 393 P.2d 144, 146 (1964) (citations omitted).

the Colorado Supreme Court has stated that one of the central purposes of a merger clause is to "allow contracting parties to limit future contractual disputes to issues relating to express provisions of the contract."<sup>19</sup> By contrast, WorldCom's suggestion that the parties should be able to rely upon the records created in the SGAT approval proceedings to interpret the SGAT would open the agreement up to virtually limitless litigation. Rather than delineating the parties' enforceable rights and obligations, WorldCom's approach would place a cloud of contractual ambiguity over the entire agreement and would improperly open the door for a party to invite courts or commissions to "rewrite the transaction by looking to evidence outside the four corners of the contract to determine the intent of the parties"<sup>20</sup> even in the absence of a factual finding of actual ambiguity in the provision(s) at issue.

The Commission, Staff, and the parties have devoted enormous resources to the development of a legally binding SGAT. They have explored the effects and purposes of their respective proposals in prefiled and live testimony. They have meticulously tracked developments, proposals, counter-proposals, and ordered resolutions relating to the express terms of the SGAT in these and other proceedings. To allow any party to effectively undue and negate those efforts by resorting to an individual party's interpretation of "what was *meant* to be included in the SGAT" (whether or not there in its express terms) would be entirely misguided and wholly contrary to basic contract law.

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<sup>19</sup> See *Nelson v. Elway*, 908 P.2d 102, 107 (Colo. 1995). The clause at issue in *Nelson v. Elway* provided in relevant part:

This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter contained herein, and supersedes all prior agreements, representations, and understandings of the parties.

908 P.2d at 107 n.1.

<sup>20</sup> *Id.* at 107.

The SGAT should be accorded the same legally binding effect as any other contract, and any effort to expand the parties' rights or obligations beyond the four corners of the written agreement should be rejected.

**D. Section 2.2 – Qwest's Proposal for Dealing with Changes in Law  
Incorporates Significant Concessions to the CLECs and Should Be Adopted.**

Section 2.2 of the SGAT relates to the construction of the Agreement under the law, rules, and regulations existing at the time the parties execute the Agreement (the "Existing Rules"). This provision requires the parties to modify the SGAT to conform with new FCC rules, state commission decisions including cost dockets, and other changes in law.

In response to the comments of the CLECs and the Commission at the workshops, Qwest has significantly revised this section. It has agreed to include in the definition of Existing Rules, "state rules, regulations, and laws" and to add language indicating that the SGAT is not only "based on" but also "in compliance with" Existing Rules.

AT&T, however, has raised concerns regarding a "process" to apply either when the parties disagree whether a change in the Existing Rules requires a modification of the Agreement or when the parties are unable to agree on the actual modifications required to implement the change in law. As currently proposed by Qwest, section 2.2 outlines an equitable and transparent process to deal with these situations. The process calls for the parties to engage in negotiations for an initial 60-day period, during which time the status quo is maintained. At the end of the 60 days (or if the parties have ceased negotiations for 15 days), the dispute will be subject to the dispute resolution provisions of the Agreement. In addition, the SGAT now provides that the first issue to be considered as a part of the dispute resolution process will be an appropriate "interim operating agreement" governing the parties' performance while the dispute is pending. This issue is to be determined, and the interim agreement implemented, within 15 days of the initiation of the dispute resolution. Qwest has agreed to maintain the status quo during those 15 days. Finally, under Qwest's proposal, once the dispute resolution process has run its course, any

resolution will relate back to, and be deemed effective as of, the effective date of the "legally binding change or modification of the Existing Rules."

Qwest's proposed section 2.2 satisfies the concern expressed by AT&T and XO regarding the parties' obligations while they are negotiating an appropriate amendment to reflect any change in the Existing Rules. As set forth above, while the parties are negotiating, but before the expiration of the initial 60-day period, they will maintain the status quo. Upon expiration of this initial period, the decision-maker under the dispute resolution provision of the agreement will determine an interim operating arrangement to be followed while the dispute is pending. Upon completion of the process, the resulting amendment will become effective and the parties will true up the rates, and to the extent practicable, other terms and conditions, unless otherwise ordered, to reflect the effective date of the change of law precipitating the dispute.

Because the section defines "legally binding modification or change" to include *only* those legal rulings that have "not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed," this delay occasioned by the parties' negotiation of an appropriate amendment would be in addition to the delay occasioned by the challenging party's direct challenge to the change at issue. The SGAT language provides that the parties will perform under the status quo during this delay. Significantly, however, the status quo may be in direct conflict with the Commission's order. Experience has demonstrated that the time between the entry of a Commission order and the date on which the order becomes "legally binding" as defined here can be substantial. Qwest's proposal places a reasonable limit on the ability of a party opposed to implementing a Commission ruling to invoke the status quo. Under Qwest's proposal, the status quo is to be maintained during any direct challenge to the change and the sixty-day amendment negotiation period. At the end of those two periods, however, Qwest's proposal allows the independent decision-maker to decide upon and implement an interim operating agreement to govern the parties' performance during the pendency of the dispute under the dispute resolution provisions.

Under Qwest's proposal, the party favoring the maintenance of the status quo in the face of a contrary Commission order is properly allowed to challenge the order but once the challenges are exhausted, it is not allowed to unilaterally thwart the implementation of the Commission's order by drawing out amendment "negotiations" and thereafter dispute resolution. Qwest's approach strikes the appropriate balance.

The true-up component of the process set forth in section 2.2 is critical. Absent a true up, each party would have an incentive to challenge and drag out any dispute about a proposal made by the other party regarding a change in law that worked to the first party's disadvantage. Without a true-up, the challenging party could unilaterally delay the effective date of any disadvantageous change of law.

In short, section 2.2 is directly responsive to issues raised by the CLECs. Qwest's proposal strikes an appropriate balance between the CLECs' desire for contractual certainty and Qwest's obligation to comply with relevant rulings of state and federal authorities in a timely manner. Because changes in law can cut both ways, Qwest's proposed language is entirely reciprocal. This provision, as extensively modified by Qwest, should be adopted.

**E. Section 2.3 – Qwest's Language Addressing Conflicts Between the SGAT and Other Documents or Tariffs Is Appropriate and Reasonable.**

AT&T questioned whether a Commission order should prevail over the SGAT when the two are in conflict and how the SGAT should describe a variance between itself and other relevant documents.<sup>21</sup> XO argued that in the event of a dispute, the status quo should be maintained until the dispute is settled.<sup>22</sup> In response to AT&T's and XO's comments, Qwest proposes the addition of the following language as sections 2.3 and 2.3.1:

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<sup>21</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 17-19 (arguing that changes should be made "to ensure that the SGAT is first in order of priority").

<sup>22</sup> See Ex. 6-Qwest-82, Response Testimony of Rex Knowles in Washington proceeding, dated June 7, 2001 ("Knowles WA Resp.") at 15.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

2.3.1 If either party believes, in good faith, that a proposed change in Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT abridges or expands its rights or obligations under this SGAT and that change has not gone through CICMP, the Parties will attempt to resolve the matter under the Dispute Resolution process. Any amendment to this Agreement that may result from such Dispute Resolution process shall be deemed effective on the effective date of the change for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of the Dispute Resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to resolve the dispute during the first sixty days after the CLEC institutes Dispute Resolution, the Parties agree that the first matter to be resolved during formal Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of formal Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented.<sup>23</sup>

These sections are appropriate, reasonable and fully satisfy the comments of AT&T and XO for the following reasons.

**1. Commission Orders Prevail.**

If the Commission specifically determines that an order prevails over the SGAT, that order will prevail. Otherwise, the SGAT prevails. The language proposed by Qwest clearly

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<sup>23</sup> If adopted, Qwest will incorporate these sections into Qwest's compliance SGAT filed in response to the Commission's report on this workshop.

articulates this position and insures that the parties will give Commission decisions their proper effect.

**2. Qwest's Language Properly Addresses the Parties' Obligations While a Dispute Is Pending.**

Like section 2.2, Qwest's proposed sections 2.3 and 2.3.1 establish a balanced and reasonable procedure to govern the parties while a dispute is pending. While the parties are resolving their disputes, but before the expiration of the initial 60-day period, the parties will maintain the status quo. Upon expiration of the 60-day period, the decision-maker under the dispute resolution provision of the agreement will develop an interim operating agreement to govern the parties' actions with respect to the disputed provisions. Upon completion of the dispute resolution process, the resulting amendment will become effective on the date of the change of rates, and to the extent practicable, on the date of the change of the other terms and conditions. This scheme insures that each party will quickly and efficiently work towards resolving their dispute and that neither party will be prejudiced while the dispute is pending.

**3. Qwest's Language Properly Describes Variances Between the SGAT and Other Relevant Documents.**

AT&T's primary issue with the SGAT's description of variances was whether the term "conflict" is broad enough to encompass all situations where related documents may affect or modify the SGAT. Specifically, AT&T argued that certain Qwest documents have altered the CLECs' interconnection agreements because the interconnection agreements did not specifically address the matter discussed in Qwest's documents. XO has raised a similar concern that Qwest may use other documents to unilaterally amend the SGAT.

To address this concern, Qwest added a last sentence to section 2.3, which states, "To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail." This language is broad enough to include all instances where a document, though not in direct conflict with the

SGAT, somehow alters or affects the SGAT. In the event of a dispute regarding the effect of a document on the SGAT, this language provides the decision-maker with a clear standard to make a ruling. Accordingly, Qwest's language is appropriate and reasonable and satisfies the CLECs concerns.

**F. Section 5.8 – Qwest's Limitation of Liability Provisions Should Be Adopted.**

In response to CLEC comments and suggestions in this and other proceedings, Qwest has substantially revised its proposed limitation of liability provisions set forth in section 5.8. As a result, the parties have been able to significantly narrow the issues in dispute relating to liability limitations. They have not, however, been able to come to consensus on all issues.

As with indemnification issues discussed below, the issues remaining in dispute relating to limitations on liability stem from a fundamental disagreement between Qwest and AT&T about the proper scope and purpose of the limitation section. On the one hand, AT&T seeks to address through these provisions perceived problems that it claims derive from Qwest's supposed position as "the monopoly competitor."<sup>24</sup> In other words, instead of addressing these terms on the merits of industry practice and business risk allocation, AT&T views this section as an opportunity to provide "meaningful incentives" to Qwest to be "accountable" and to avoid "backsliding."<sup>25</sup> In this way, AT&T has confused the purposes of this section with those of Qwest's integrated, self-executing quality performance assurance plan ("QPAP").<sup>26</sup>

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<sup>24</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 33.

<sup>25</sup> See *id.* at 33-35.

<sup>26</sup> In briefing filed in other proceedings, AT&T has further confused the issue of liability limits by arguing in terms that cast doubt on its agreement to language which specifically excludes liability of consequential and indirect damages, regardless of the claim. In light of the parties' agreement regarding the unequivocal exclusion of indirect and consequential damages contained in § 5.8.2 of the SGAT and the similar exclusion embodied in AT&T's own proposal, Qwest assumes that the references to liability for damages suffered by AT&T's customers in the multi-state briefing were inadvertent and not meant to signal a retreat from the parties' earlier agreement.

By contrast, as Qwest has noted, the purposes of this section are straightforward. Section 5.8 aims at limiting the parties' potential liability to each other and to third parties in a way that is both consistent with established industry practice and comports with existing state law.<sup>27</sup>

Qwest's proposals adequately accommodate payments made under the QPAP entered into between the parties without unnecessarily confusing the purposes of these provisions and any remedial scheme adopted by the state commissions in connection with Qwest's 271 approval.<sup>28</sup> As currently drafted, the provisions set forth in section 5.8 relating to liability limitations address the CLECs' legitimate comments and conform to longstanding industry practice.

**1. Qwest's Proposal to Limit Liability for Performance-Related Losses to the Cost of Service Is Reasonable and Supported By Extensive Industry Practice.**

In briefs filed in other proceedings, AT&T has argued that this Commission's goal should be to create a "market environment that replicates and eventually becomes competitive." By raising the issue of competition, AT&T unwittingly lends support to Qwest's position on the issues of liability limits and indemnity, discussed below. Qwest's insistence upon the limits set forth in its proposed SGAT sections derives from the fact that as a heavily regulated entity, Qwest is not able to factor into the price at which it would be willing to sell the services and network elements covered by the SGAT risks associated with the expansive liability and indemnity obligations the CLECs seek. In a truly competitive market, Qwest would factor such risks in to its offering price and, indeed, vary that price according to the risk coverage sought by the purchaser CLEC. Here, however, Qwest is plainly not free to engage in such pricing practices. The price of the services and elements Qwest offers in Arizona is set by the Commission and is, under the Act's pricing rules, based on the cost of providing the element or

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<sup>27</sup> See generally Ex. 6-Qwest-82 (Brotherson WA Reb.) at 46-53.

<sup>28</sup> See *id.* at 47-48, 51.

service at issue. In this sense, AT&T is correct in noting that the process does *not* replicate a free market. However, rather than strengthening its position, this fact undermines the CLECs' criticisms of Qwest's proposed liability limits and indemnity provisions.

Courts and commissions have long recognized the need for such limits in the context of regulated industries for a number of reasons. First, commissions have indicated that it is in the public interest to limit liability of regulated industries such as public utilities in order to ensure public access to utility services at affordable rates. Without such limitations of liability, costs associated with the potential risk of lawsuits would otherwise be passed on to captive ratepayers thus raising rates and limiting wider public access of utility services.<sup>29</sup> Therefore as long recognized by the U.S. Supreme Court, "[t]he limitation of liability [is] an inherent part of this rate."<sup>30</sup>

Another justification for limiting liability of public utilities is the highly regulated nature of the industry itself. As explained by one court,

The theory underlying [decisions upholding the right of regulated utilities to limit their liability] is that a public utility, being strictly regulated in all operations with considerable curtailment of its rights and privileges, shall likewise be regulated and limited as to its liabilities. In consideration of its being peculiarly the subject to state control, "its liability is and should be defined and limited." There is nothing harsh or inequitable in upholding such a limitation of liability when it is thus considered that the

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<sup>29</sup> See, e.g., *In the Matter of Sprint Communications Company L.P.'s Petition for Arbitration of with Contel of Minnesota, Inc. d/b/a/ GTE Minnesota Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Docket No. 407,466/M-96-1111 ¶ 34 (Minn. P.U.C. Jan 21, 1997) ("*Re Sprint Communications Co.*"); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, Decision 95-12-057 R.95-04-043 I.95-04-044 ¶ 28 (Cal. P.U.C. Dec. 20, 1995). (adopting ILEC's proposed language to exclude negligence).

<sup>30</sup> *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 571 (1921) (Brandeis, J.).

rates as fixed by the commission are established with the rule of limitation in mind. Reasonable rates are in part dependent on such a rule.<sup>31</sup>

Third, the necessity to limit liability for a highly regulated industry also derives directly from the lack of a competitive market environment. For example, in *Re Sprint Communications*,<sup>32</sup> the Minnesota Public Utilities Commission agreed that the ILEC's proposed limitation of liability language excluding negligence was appropriate within an interconnection agreement since it was consistent with the status quo of the industry and was necessary in the absence of a "legitimately competitive environment" where parties can negotiate "to adopt or not adopt such clauses, as their respective bargaining strength dictates."<sup>33</sup> Therefore, when parties are otherwise unable to freely negotiate an agreeable level of liability risk and factor such risk into the offering price, contractual limitations such as those proposed by Qwest here are required.

As discussed in Mr. Brotherson's rebuttal testimony, section 5.8.1 captures the traditional tariff limitation that limits liability to the cost of services that were not rendered or were improperly rendered to the end user.<sup>34</sup> AT&T does not challenge the fact that this limitation reflects longstanding industry practice, including its own contractual arrangements with its

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<sup>31</sup> *Waters v. Pacific Telephone Co.*, 523 P.2d 1161, 1164 (Cal. 1974) (quoting *Cole v. Pacific Telephone & Telegraph Co.*, 246 P.2d 686 (Cal. 1952)). See also *In Re Illinois Bell Switching Station Litig.*, 641 N.E.2d 440, 445-446 (Ill. 1994) (citations omitted).

<sup>32</sup> *Re Sprint Communications*, Docket No. 407,466/M-96-1111 ¶ 34 (Minn. P.U.C. Jan 21, 1997).

<sup>33</sup> *Id.*

<sup>34</sup> See 6-Qwest-82 (Brotherson WA Reb.) at 47, 50; see also, e.g., XO Pennsylvania, Inc. Local Exchange Services Telephone PA P.U.C. No. 8 Tariff, § 2.1.4(a) (eff. July, 30, 2000) (limiting XO's liability for performance-related damage to the lesser of \$500 or "an amount equal to no more than the proportionate charge (based on rates then in effect) for the service during the period of time in which the service is affected").

customers. Rather, AT&T speculates that this limitation could mean that recovery is disproportionate to potential damages.<sup>35</sup> AT&T's comments on this issue are misplaced.<sup>36</sup>

**2. The CLECs' Comments Relating to Payments Made Pursuant to a Performance Assurance Plan Are Misplaced.**

Commenting on an earlier version of Qwest's limitation of liability language, AT&T proposed a revision carving out of the limitation provisions payments made pursuant to a "backsliding" plan such as Qwest's QPAP.<sup>37</sup> In response to this suggestion, Qwest added the following language to section 5.8.2:

If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. \_\_\_\_.

This language should resolve AT&T's main concerns relating to how the limitations section will account for payments under the QPAP.

AT&T argues that Qwest's liability under the SGAT "is directly tied to Qwest's section 271 application because sufficiently high liability and accountability are the only way to continue to insure that Qwest will perform its contractual (and statutory) obligations once its § 271 application is approved."<sup>38</sup> This argument is without merit. As Mr. Brotherson pointed out, the real issue is whether the SGAT's limitation of liability provisions "should be used as a basis for

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<sup>35</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 33.

<sup>36</sup> AT&T's vague claims of "disproportionality" do not change the analysis. As Mr. Brotherson noted, to the extent that AT&T may be contractually exposed to third parties for liability beyond the cost of providing service, AT&T (and not Qwest) is in the best position to identify that potential liability and to take reasonable steps, through its contract and tariff language, to protect against those risks. Ex. 6-Qwest-82 (Brotherson WA Reb.) at 47.

<sup>37</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 33-34.

<sup>38</sup> *Id.* at 34.

shifting liability to Qwest, regardless of standard industry practices."<sup>39</sup> AT&T has provided no commercial reason for its proposed changes and has not disputed that Qwest's approach comports with longstanding industry norms.<sup>40</sup>

In briefing submitted in the multi-state proceeding, XO has raised unfounded concerns regarding whether payments under the QPAP would count towards the liability limits set forth in section 5.8. of the SGAT. This fear is wholly unfounded. Section 5.8.2 plainly excludes from the limits set forth in section 5.8. "any amounts due and owing" under a QPAP. To the extent that XO's concern is based on an intent to double recover under the QPAP and the SGAT based on the same conduct (i.e., collect penalty payments under the QPAP in addition to other direct damages based on an alleged breach), XO's position is contrary to that taken by CLECs in comments filed on the QPAP, where they have uniformly acknowledged that CLECs should not be able to collect damages and QPAP penalties based on the same conduct.

**3. Qwest's Reluctance to Expand the "Willful Misconduct" Exclusion Is Well Supported and Should Be Adopted.**

AT&T has also proposed several revisions to section 5.8.4, which provides an exception to the limitation of liability for willful misconduct. In each case, AT&T's proposals are misguided and should be rejected.

First, AT&T suggests that the exception for willful misconduct be expanded to include gross negligence.<sup>41</sup> Second, AT&T proposes a further expansion of the exception to include

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<sup>39</sup> Ex. 6-Qwest-82 (Brotherson WA Reb.) at 49.

<sup>40</sup> Even AT&T acknowledges that this issue "may need to be revisited after the Commission adopts a backsliding plan." Ex. 6-Qwest-82 (Hydock WA Aff.) at 33. Thus, unless and until the commissions adopt and the parties agree to enter into an approved QPAP, the remaining language proposed by AT&T for section 5.8.2 and its claim of a "direct tie" between "Qwest's liability/accountability under this SGAT" and Qwest's 271 application are premature. *See id.* at 34; *see also* Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48.

<sup>41</sup> Ex. 6-Qwest-82 (Hydock WA Aff.) at 34.

"bodily injury, death or damage to tangible real or tangible personal property caused by such Party's negligent act or omission or that of their [*sic*] respective agents, subcontractors or employees."<sup>42</sup> As with the other suggested modifications to this section discussed above, AT&T's suggestions reflect a misunderstanding of the purpose of the limitation provision in general and the willful misconduct exception in particular.

Qwest included the term "willful misconduct" in its proposed exception in section 5.8.4 because that is the standard exclusion contained in the telecommunications tariffs, including those of both Qwest and AT&T.<sup>43</sup> AT&T has not challenged Mr. Brotherson's observation that the proposed inclusion of "gross negligence" in this provision would be inconsistent with established practice in the industry. Nor has AT&T provided any independent commercially reasonable basis for the expansion of the exclusion it proposes.

AT&T's second proposed modification of section 5.8.4 is similarly misplaced. This proposal also has the potential effect of altering existing state law. Section 5.8.2 excludes liability for consequential damages, which, as explained above, is an exclusion with which AT&T agrees. AT&T's proposed *inclusion* of liability for "bodily injury, death, or damage to tangible real or tangible personal property" caused by simple negligence<sup>44</sup> amounts to a contractual provision stating that these types of losses constitute "direct damages" under the SGAT, and that liability for these damages is not limited by Section 5.8.1. While it is possible that these types of injuries may, in a given case, constitute "direct damages," the question is a matter of existing state law that should be addressed in accordance with the law of the state

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<sup>42</sup> *Id.*

<sup>43</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48.

<sup>44</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 34.

where the loss occurs.<sup>45</sup> Moreover, apart from the speculative claim that "[i]f set too low, then Qwest could consider [its potential liability] as just another cost of doing business and pay [damages] rather than perform,"<sup>46</sup> AT&T has provided no basis for excluding such damages from the general limitations of section 5.8.1.

AT&T's proposed modifications to section 5.8.6 are based on a misinterpretation of the intent of the provisions. This section is intended to specify Qwest's duty to investigate fraud without altering the general limitations of liability set forth in section 5.8.<sup>47</sup> Accordingly, AT&T's attempt to make Qwest liable for fraud associated with service to the CLEC's end users where "Qwest is responsible" for the fraud<sup>48</sup> is misplaced and should be rejected. Section 5.8.4 already provides an exception to the limitation of liability for willful misconduct. AT&T's proposed modifications to section 5.8.6 are just another attempt to deviate from the well-established industry practice of excluding willful misconduct from liability limits and should be rejected for the reasons set forth above.

**4. Section 5.8.6 Is Appropriate and Is Completely Consistent with Section 11.34 (Revenue Protection).**

Although not raised in other proceedings, CLECs later raised in Colorado the question of whether section 5.8.6, which limits Qwest's liability for fraud associated with the use of services provided to CLECs under the Agreement, is appropriate given Qwest's agreement in section 11.34 to make available to CLECs fraud prevention or revenue protection features. Section 5.8.6 is appropriate and is completely consistent with section 11.34. Qwest's agreement to make available to CLECs fraud prevention or revenue protection features in no way should be

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<sup>45</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48-49.

<sup>46</sup> Ex. 6-Qwest-82 (Hydock WA Aff.) at 34.

<sup>47</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 49.

<sup>48</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 34-35.

construed as making Qwest an insurer of the CLECs' proper use, implementation, or benefit from those features. Qwest will make them available, but it is up to the CLECs to ensure that they are properly implemented to protect against fraud.

**G. Section 5.9.1 – Qwest's Indemnification Language Provides a Reasonable, Market-Based Approach to the Parties' Competing Interests.**

Consistent with its approach throughout the collaborative process, Qwest has incorporated a number of revisions to the indemnification provisions of the SGAT at the request of AT&T. However, as set forth below, where AT&T seeks to unduly enlarge Qwest's indemnification obligations and Qwest's exposure for claims brought by end user customers of the CLECs, Qwest has not agreed to modify its proposals.

As currently drafted, the indemnification provisions incorporate reasonable reciprocal indemnity rights and obligations. They provide a market-based approach to the possibility that either party may attempt to use very narrow liability limitations with its end users as a marketing tool based on the assumption that service interruptions that may be attributable to the other party will effectively be passed through to that party.

**1. Indemnification for Bodily Injury Should Be Limited to Failure to Perform under the Agreement.**

The first issue under section 5.9 concerns AT&T's contention that section 5.9.1.1 should not be limited to claims, including claims for bodily injury and damage to tangible property, made by third parties (other than end users of either party) resulting from a breach of or failure to perform under the agreement.<sup>49</sup> Read in conjunction with section 5.9.1.2, discussed below, and prevailing industry practice, this provision equitably allocates exposure between the parties.

Qwest's proposed section 5.9.1.1, as limited by section 5.9.1.2, only applies to claims brought by persons or entities that are not end users of either party. As to such strangers to both

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<sup>49</sup> See, e.g., Ex. 6-Qwest-82 (Hydock WA Aff.) at 36-37 (striking similar provisions of earlier Qwest proposals for § 5.9.1.1).

parties, Qwest proposes that contractual indemnification rights would apply only if there is some nexus to the agreement between Qwest and the CLEC – i.e., a breach of or failure to perform under the agreement. It makes no sense to contractually obligate the parties to indemnify each other for any claim brought by any party relating to any conduct of the parties, even if unrelated to the agreement. Under AT&T's approach, if an AT&T employee were to injure someone, with no contractual relationship to either Qwest or AT&T, in connection with AT&T's provision of service to an end user, the contract might be read to require Qwest to indemnify AT&T for the claim.

Qwest's proposal to limit the parties' indemnification obligations regarding claims brought by those other than end users of either party comports with established industry practice. For example, in its template interconnection agreement for use in Texas, Southwestern Bell Telephone Company includes language similarly limiting the parties' indemnification obligations.<sup>50</sup> This language has been approved by the Texas Public Utility Commission and endorsed, at least indirectly, by the FCC in approving SBC's 271 application in Texas. In addition, although indemnification provisions between ILECs and CLECs in general contract offerings such as the SGAT do not have an exact analogue in the agreements or tariffs of carriers, CLECs routinely include indemnity language in their tariffs and agreements with end users that requires end users to indemnify the carrier for any claims brought by third parties relating to the use of the services provided by the carrier to the end user.<sup>51</sup>

The point is this: because there are literally thousands of scenarios under which one party conceivably could legally obligated to indemnify the other at law, they should be contractually

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<sup>50</sup> See, e.g., SWBT Interconnection Agreement (T2A), § 7.3.1 (a copy of which is available online at [https://clec.sbc.com/1\\_common\\_docs/interconnection/t2a/agreement/00-tc.pdf](https://clec.sbc.com/1_common_docs/interconnection/t2a/agreement/00-tc.pdf))

<sup>51</sup> See, e.g., Sprint Arizona Tariff No. 1, § 4.14; MCIMetro Arizona Tariff No. 1, § 2.1.4.12 (both of which are available online at [www.cc.state.az.us/utility/tariff/index.htm](http://www.cc.state.az.us/utility/tariff/index.htm)).

obligated to indemnify each other for claims of third parties other than end users only where the underlying conduct bears some connection with a party's breach or failure to perform under the agreement. Qwest's language adequately covers such situations. Qwest's proposed section 5.9.1.1 should be adopted.

**2. Each Party Should Contractually Indemnify the Other for All Claims Brought by a Party's End User.**

As to claims brought by the end-users of either party, the situation is very different. In this situation, the Commission must ensure that the party in the best position to reasonably limit the potential liability do so. In the absence of a mechanism requiring each part to indemnify the other for any claims brought by their end user customers, AT&T could, as a marketing tool, offer to not exclude liability for consequential damages resulting from service outages, notwithstanding its own long practice to the contrary, on the assumption that under the contract, it will be able to shift that liability to Qwest. Such lenient liability rules could provide a significant competitive advantage to a CLEC willing to offer them to end users engaged in telemarketing, for example. Without the end-user indemnification provision proposed by Qwest in section 5.9.1.2, a CLEC may choose to offer such terms and then attempt to pass through any resulting liability for consequential or incidental (e.g., lost profits) damages to Qwest. In effect, the CLEC could foist upon Qwest unlimited liability relating to service outages.

By contrast, under Qwest's proposed language, while each party remains free to engage in such marketing tactics, it will do so at its own peril. Should a CLEC wish to use lenient liability limits as a marketing point, it will have to do so with the knowledge that it will not be able to pass the costs of that decision to Qwest. In this way, Qwest has proposed a rational, market-based approach to both the issues of indemnity and liability limits vis-à-vis consumers. Qwest's approach also incents each of the parties to maintain the longstanding contract and tariff-based limits that restrict customer damages resulting from performance-related breaches to direct damages and the cost of the services affected.

As Mr. Brotherson noted, AT&T's fundamental contention appears to be that the indemnification section should expose Qwest to more, rather than less, liability because otherwise Qwest will not be "accountable" or "there will be little incentive left to insure Qwest's performance of interconnection agreements."<sup>52</sup> Such claims simply cannot provide appropriate standards for evaluating SGAT indemnification provisions; indemnification provisions are not intended to function as substitute remedies for breach, as AT&T appears to believe. Instead, the indemnification provision of the SGAT should be aimed at reflecting standard practices within the telecommunications industry, consistent with the fair allocation of responsibility between the parties.<sup>53</sup>

### **3. The CLECs' Concerns Regarding "Commission Ordered Retail Service Rules" Are Misplaced.**

XO's sparse comments on Section 5.9 are similar to its comments on Section 5.8. XO and other CLECs raise a concern about being indemnified against any retail service quality payments, penalties, or commission fines CLECs must pay to retail customers or state treasuries as a result of provisioning or maintenance problems that they attribute to Qwest.<sup>54</sup> These concerns are misplaced.

First, CLECs are not subject to fines, penalties, or payments to their end user customers for failure to meet service quality requirements in Arizona. Second, in any event, the significant

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<sup>52</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 53, 55.

<sup>53</sup> *Id.* at 53-54. Qwest's proposed indemnity provisions comport with industry practice as reflected, for example, in the template agreement approved by the Texas Public Utility Commission, and subsequently endorsed by the FCC in order approving Southwestern Bell Telephone Company's petition for authority to provide in-region long distance in that state. Sections 7.3.1 and 7.3.2 of the Texas template interconnection agreement (T2A) incorporate an approach similar to that proposed by Qwest here whereby the parties' indemnification obligations turn on the status of the claimant as an end user of the one of the parties. For the reasons set forth above, that approach is reasonable and should be adopted.

<sup>54</sup> See Ex. 6-Qwest-82 (Knowles WA Resp.) at 18.

payments CLECs receive under the QPAP as liquidated damages sufficiently compensate CLECs for Qwest's performance.

In sum, Qwest's indemnity proposals provide a holistic, market-based approach under which the parties are free to "price" their liability and indemnity rights and obligations as they choose. However, under Qwest's approach, while the parties are free to determine those pricing points, CLECs are not free to pass along to Qwest the resulting "costs" associated with their marketing plans. Qwest's proposed indemnity provisions, taken together with its proposals relating to liability limits and viewed in the context of common law indemnity principles, do not unduly enlarge the parties' contractual indemnity obligations and properly incent those in the best position to limit liability to consumers to do so (consistent with longstanding practices), without any abridgement of indemnity by operation of the local law.

**H. Section 5.12 – AT&T's Proposed Restrictions and Conditions Regarding Sale of Qwest's Exchanges Are Unduly Burdensome and Should Be Rejected.**

Qwest has made significant concessions to AT&T on the issue of assignment of the parties' agreement to others. These concessions have resulted in the resolution of all issues relating to assignment. Nonetheless, AT&T continues to press Qwest into ceding to CLECs unprecedented control over Qwest's business decisions regarding the sale of its local exchanges. AT&T's demands are neither factually nor legally supported by the record here and, therefore, should be rejected.

In its initial comments, AT&T proposed a new section of the SGAT purporting to cover the sale of Qwest's exchanges.<sup>55</sup> Under AT&T's proposal, in addition to providing notice to affected CLECs and using its best efforts to facilitate discussions between the purchasing party

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<sup>55</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 47-49.

and the affected CLECs (principles which Qwest does not oppose),<sup>56</sup> Qwest would be required to fulfill the following unreasonable conditions: (1) obtain for the CLEC a "written agreement" from the party to which the exchange is to be transferred "in a form and substance reasonably satisfactory to [the CLEC]" that the purchasing party "agrees to be bound by the interconnection and intercarrier compensation obligations set forth in [the SGAT]" until and interconnection agreement between the CLEC and the party becomes effective; (2) "serve" the CLEC with a copy of "any Transfer application or other related regulatory documents associated with the transfer; and (3) not oppose the CLEC's intervention in any regulatory proceeding relating to the transfer."<sup>57</sup>

AT&T cannot credibly argue that such a "gag order" advances the public interest in participating in commission proceedings relating to a proposed transfer of exchanges in a given state. Indeed, when pressed at the hearing, AT&T could not come up with any cogent reason for its attempt to contractually foreclose state commissions from applying their own "rules and judgment" to the question of whether a party has a substantial enough stake in the proposed transfer to warrant intervention.<sup>58</sup> There is no such reason. AT&T's proposal should be rejected.

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<sup>56</sup> Although Qwest does not oppose the principle of notifying CLECs of impending exchange transfers, as explored in the multi-state hearing, the 180-day condition included in AT&T's proposed SGAT § 5.12.2(b) is not workable. *See* Ex. 6-Qwest-83 (Multi-State Tr.) at 187-88. Indeed, faced with the potential effects of the provision as proposed, AT&T conceded that a change was necessary. *See id.* at 199-200 ("Mr. Brotherson commented that this provision had a potential for causing a delay in the closing of the Qwest transaction, and that's not intended. I mean, certainly we could put language in here that, you know, 180 days prior, provided that, you know, the time for notice shall in no way delay the closing of the pending transaction."). In addition, as Mr. Brotherson points out, Qwest has in the past provided the facilitating role contemplated by AT&T's proposal for § 5.12.2(c) and is not opposed to continuing good faith efforts in this regard in the future. *See* Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48-49.

<sup>57</sup> *See* Ex. 6-Qwest-82 (Hydock WA Aff.) at 48-49 (setting forth proposed § 5.12.2(a), (d), and (e)).

<sup>58</sup> *See* Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 189-94.

Similarly, the Commission should reject AT&T's demand that Qwest obtain a written agreement from the purchasing party to be bound by all of terms, conditions, and obligations of Qwest's agreement with the CLEC until it is able to enter into a new agreement with the CLEC. This requirement would substantially devalue Qwest's assets (the exchanges) as it would place inherent liabilities on any party interested in purchasing them. While a company as large as Qwest, in connection with the approval of its application to provide in-region long distance service, may agree to a self-executing remedial plan that includes substantial penalties and rigorous performance indicators and reporting requirements, it is an entirely different matter for a smaller facilities-based new entrant to take on such responsibilities if it purchases Qwest's exchanges. The Commission should not allow AT&T to effectively devalue and materially limit Qwest's ability to manage its own assets through its proposed section 5.12.2.

Moreover, contrary to AT&T's assertions, there is no factual basis for the onerous conditions AT&T proposes.<sup>59</sup> As set forth in Mr. Brotherson's rebuttal testimony, the parties' experience in connection with the proposed transfer of Qwest's exchanges to Citizens demonstrates that, rather than allowing for a more efficient and orderly sale, the restrictions proposed by AT&T will likely only serve to mire that process in contention and inefficiencies.<sup>60</sup> Indeed, AT&T's conduct in connection with these transfers belies its claims of interest here. Despite having notice of the impending transfers in various states, the record is uncontroverted in establishing that the process went so smoothly that AT&T intervened in only a few of the affected states and withdrew from the proceedings in which it did intervene.<sup>61</sup>

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<sup>59</sup> See Ex. 6-Qwest-82 (Hydock WA Aff.) at 47.

<sup>60</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48-49.

<sup>61</sup> See *id.* at 48.

**I. Section 5.16.9 – Qwest's Proposals Regarding Confidentiality of CLEC Forecasts Appropriately Balances the Competing Interests Involved.**

Section 5.16.9 is not the only section dealing with confidentiality of forecasting information. Two sections of the SGAT to which the parties have already agreed cover this topic – section 7.2.2.8.12 (forecasts of local interconnection service ("LIS") trunks) and section 8.4.1.4.1 (collocation forecasts). However, in response to comments raised by the CLECs after they had agreed to these more specific provisions, Qwest has agreed to address anew in the general terms and conditions section the issue of how to treat CLEC forecasting information.

CLECs have raised two issues regarding Qwest's proposals for section 5.16.9, which governs CLEC forecasting information. Each will be addressed below in turn.

**1. Aggregated Forecasts Need Not Be Treated as Confidential.**

First, CLECs have objected to Qwest's proposal to treat as confidential only forecasts and forecasting information provided to Qwest by an *individual CLEC*. Contrary to the approach proffered by the CLECs, while there may be a need to maintain individual CLEC-specific forecasting information, there is no such need to treat forecasts *in aggregate form* as similarly sensitive. The CLECs' comments regarding the disclosure of aggregate forecasts are neither well articulated nor supported by any evidence in the record. More importantly, however, the CLECs' claim that aggregated forecasting data somehow retains some degree of individualized confidentiality is without merit. Forecasting data is confidential, proprietary, or competitively sensitive to an individual CLECs only to the extent that the data can be linked to the CLEC. Aggregated data that does not lend itself to make that critical link simply cannot be deemed to be confidential, proprietary or competitively sensitive data of any CLEC.<sup>62</sup>

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<sup>62</sup> In briefing filed in other proceedings, AT&T has argued that forecasting data assumed to be a trade secret does not lose its protected status merely by combining it with other similar data. The cases that AT&T has relied upon in support of its novel title/property based approach to this question simply do not apply here. The issue is not whether Qwest has a "license" to use the CLEC's "property" (forecasts), but whether the aggregated data discloses any confidential, proprietary, or commercially

To the extent that the CLECs' comments regarding aggregated data arise in the context of small exchanges where only one or two CLECs operate, Qwest has addressed this concern in its recent proposal for section 5.16.9.1.1. This section provides that Qwest will not disclose aggregated data "if such disclosure would, by its nature, reveal individual CLEC information." Thus, in the case of small exchanges where only a few CLECs operate, Qwest has committed to not disclosing the data, in any form, where disclosure of aggregate data would compromise individual CLEC-specific data. Further, Qwest has committed to prohibit access to CLEC forecasting data in any form by "its retail, marketing, sales or strategic planning personnel."<sup>63</sup> This revision should resolve the CLECs' concerns and, thus, should be adopted.

**2. Qwest's Language Appropriately Limits Qwest Employee Access to CLEC Forecasts to those Employees Who Need to Know.**

Next, the CLECs have objected to the classes of Qwest employees to whom forecasting information can be disclosed. In framing the narrow issue in dispute here, it is helpful to note what the parties do *not* dispute. First, as drafted, sections 5.16.9.1 and 5.16.9.1.1 unambiguously prohibit the disclosure of CLEC forecasting information, in individual or aggregated form, to Qwest retail marketing, sales, or strategic planning personnel. There is no dispute about the reasonableness of this prohibition. Second, there is no dispute that Qwest legal personnel must have access to CLEC forecasting information where a legal issue arises about any specific forecast. Thus, the only dispute concerns the employees who should be allowed access to the forecasting data.

Qwest's proposal for section 5.16.9.1 strikes the appropriate balance. It provides that the parties (the section is reciprocal) may disclose, on a need to know basis, forecasts and forecasting information to "wholesale account managers, wholesale LIS and Collocation product managers,

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sensitive data of any individual CLEC at all. As explained, under the conditions set forth in the SGAT on this issue, it does not.

<sup>63</sup> SGAT § 5.16.9.1.1.

network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information." These classes of employees all must have access to the forecasting data in order to place and provision CLEC orders and to adequately plan for future growth of the network. The wholesale managers responsible for the CLEC's account obviously must be allowed access this information as they are the CLEC's point of contact within Qwest. CLECs cannot initiate orders without interfacing with these representatives. Wholesale LIS and Collocation product managers must access to this information because it directly affects products for which they are responsible. These managers cannot effectively manage these products and the processes for their procurement and provisioning without knowing projected future needs. The product managers work with account managers to address questions that may arise concerning individual CLEC forecasts.

By its very terms, the access afforded individual employees within the classes identified is on a need-to-know basis. And, under section 5.16.9.2, the information must be maintained in secure locations where such access is limited to those personnel delineated in section 5.16.9.1.

Qwest's proposed section 5.16.9 appropriately balances the CLECs' interest in maintaining the confidentiality of their forecasting data against Qwest's need to provision and plan for the growth of its network in order to serve all local consumers. Qwest has incorporated a number of suggestions made by the CLECs in an effort to reach a compromise on this language. Qwest's proposal should be adopted.

**3. AT&T's Proffered Affidavit Regarding an Alleged Improper Winback Incident in Minnesota Should Be Given No Weight Here.**

In this and other proceedings, AT&T has presented an affidavit purporting to recount an AT&T employee's experience in Minnesota switching from Qwest's to AT&T's service.<sup>64</sup> The affidavit should be given no weight in this proceeding. First, contrary to the assertions of

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<sup>64</sup> See, e.g., Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 246-48.

counsel for AT&T, the affidavit is not relevant to any issue in dispute here. While the affiant claims to have been contacted a number of times by Qwest personnel, nowhere in the affidavit does he allege that Qwest retail personnel learned of his desire to switch carriers through improper means. Indeed, the affidavit is conspicuously silent on this critical point and, therefore cannot stand for the proposition for which AT&T presumably offers it.

Second, no AT&T witness alleges that Qwest has improperly engaged in customer retention or winback activity in Arizona. Instead, AT&T's counsel baldly asserts rampant misconduct which, according to AT&T's counsel, must affect Arizona, based on the alleged single experience of one of its employees in Minnesota. Qwest knows of no complaint filed by the affiant in Minnesota relating to the matters alleged in the affidavit, nor does Qwest know of any such complaints submitted to it or to this Commission.<sup>65</sup>

Under these circumstances, the Commission should give no weight to the proffered affidavit in these proceedings.

**J. Section 17, Exhibits F and I – Qwest's Proposals Regarding BFRs, SRPs, and ICB Should Be Adopted.**

As with virtually every other section in the SGAT, Qwest has substantially revised its proposals concerning the bona fide request ("BFR") process, the special request process ("SRP") and individual case basis ("ICB") provisioning in an effort to narrow the issues and in the spirit of compromise. The sheer number of the revisions is matched by the significance of the concessions reflected in them. For instance, with respect to the BFR process, Qwest has agreed to substantially reduce, from earlier versions of the template interconnection agreement, the timeframes in which it must determine BFR feasibility and provide a quote.<sup>66</sup> As currently

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<sup>65</sup> See CO Tr. (8/22/01) at 273-74 (noting that Qwest has also searched its records in Colorado and Washington in response to AT&T's efforts to proffer the affidavit in proceedings in those states; as here, Qwest knows of no such complaints in those states).

<sup>66</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 99.

constituted, the SGAT calls for Qwest to determine BFR feasibility within 21 days (versus 30 days in the original proposal) and allows 45 days for a quote (versus 90 originally).<sup>67</sup> Indeed, these timeframes are shorter than those offered by other ILECs.<sup>68</sup> In addition, in response to CLECs' requests, Qwest has agreed to refund one-half of the BFR processing fee where the CLEC cancels its BFR within 10 business days of Qwest's receipt of the form.<sup>69</sup> In short, Qwest has demonstrated a real willingness to accommodate the comments of the CLECs.

Apart from these efforts to resolve issues, it is also important to place the remaining disputed issues on this topic into context. Qwest developed the BFR process to address those truly *unique* situations where the SGAT does not already offer an interconnection service, access to an unbundled network element, or an ancillary service required by CLECs.<sup>70</sup> The SGAT addresses in detail multiple unbundled elements, numerous collocation possibilities, and various forms of interconnection, ancillary services, and resale issues.<sup>71</sup> The uncontroverted record evidence establishes that virtually *all* of a CLEC's needs are met by the number and diversity of

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<sup>67</sup> *Id.*; see also SGAT §§ 17.4, 17.7.

<sup>68</sup> Ex. 6-Qwest-82 (Brotherson WA Reb.) at 98-99. For example, Southwestern Bell's template interconnection agreement in Missouri describes the new services request process, which is called the Special Request Process. See SBC Missouri template agreement (M2A), Attach. 6 – Unbundled Network Elements, § 2.22, at 5-7 (the M2A agreement is available online at <https://CLEC.sbc.com/unrestr/interconnect/m2a/agreement.cfm>). As described in that document, under Southwestern Bell's Special Request Process, which is the analogous to Qwest's BFR process, Southwestern Bell provides CLECs with a preliminary analysis within 30 days, and provides a quote to the CLEC within 60 days after notification of the preliminary analysis if the CLEC has specifically requested Southwestern Bell to proceed beyond the preliminary analysis. The Arkansas template agreement describes the same process, except that the A2A agreement allows 90 days to develop a quote. See SBC Arkansas template agreement (A2A), Attach. 6 – Unbundled Network Elements, § 2.22, at 5-7 (the A2A agreement is available online at <https://clec.sbc.com/unrestr/interconnect/a2a/agreement.cfm>).

<sup>69</sup> See SGAT § 17.2.

<sup>70</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 98.

<sup>71</sup> *Id.*

the offerings already provided for the in the SGAT.<sup>72</sup> Qwest is doing business with 114 CLECs in Arizona. Since 1999, Qwest had received from these CLECs only *two* BFRs in Arizona, none of which was submitted by AT&T or WorldCom.<sup>73</sup> Accordingly, while AT&T and WorldCom have requested (and Qwest has largely agreed to) numerous changes to Qwest's BFR procedures, the record is that none of these CLECs have had requests in Arizona that required a BFR to implement.

Similar context is helpful regarding the special request process ("SRP") set forth in Exhibit F to the SGAT. As Mr. Brotherson explained, Qwest originally developed the SRP at the request of CLECs to allow them to access features of a switch to be loaded or activated.<sup>74</sup> Qwest later expanded the process to include non-standard combinations of unbundled network elements that Qwest is not currently offering as standard products and unbundled network elements that the FCC or the state commissions have defined as a network element to which Qwest must provide unbundled access but for which Qwest has not created a standard product.<sup>75</sup> As with the initial SRP features, Qwest added these later provisions at the behest of CLECs.<sup>76</sup> While this process has grown, again at the request of CLECs, it has not "mushroomed" as AT&T suggests.<sup>77</sup> As with the BFR process, Qwest has agreed to make a number of important changes in the SRP to accommodate CLECs.

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<sup>72</sup> *Id.*

<sup>73</sup> See 6-Qwest-5, Rebuttal Affidavit of Larry B. Brotherson in Arizona proceeding, dated May 15, 2001, at 93.

<sup>74</sup> Ex. 6-Qwest-82, Direct Testimony of Larry B. Brotherson in Washington proceeding, dated May 16, 2001 ("Brotherson WA Dir.") at 21-22; Ex. 6-Qwest-82 (Brotherson WA Reb.) at 121.

<sup>75</sup> Ex. 6-Qwest-82 (Brotherson WA Reb.) at 121.

<sup>76</sup> *Id.*

<sup>77</sup> See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 71.

Finally, again at CLEC request, Qwest has agreed in Exhibit I of the SGAT to identify how Qwest will handle CLEC requests for services that may require either rates or intervals to be established on an individual case basis.

In short, as summarized above, Qwest has made substantial efforts to build processes and procedures that will accommodate the relatively rare instance when a CLEC wishes to obtain features, services, or combinations that are not otherwise identified in the SGAT. Qwest also has striven to accommodate the specific revisions requested by AT&T and XO relating to the SGAT provisions governing these processes. In light of this background, Qwest addresses below the remaining disputes regarding these related topics.

**1. AT&T's Demand that Qwest Provide Notice to All CLECs of Substantially Similar BFRs Is Unreasonable and At Odds with the Positions of Other CLECs.**

First, invoking the nondiscrimination requirements of the Act, AT&T has demanded that Qwest provide notice to CLECs of "substantially similar" BFRs. In response, Qwest has included in section 17.12 this very language.<sup>78</sup> In addition, in this and other workshops AT&T has demanded notice of all BFRs submitted by its competitors, based at least in part on the Act's "pick and choose" provisions, arguing, in effect, that any CLEC ought to be able to pick and choose the BFRs of other CLECs as well.<sup>79</sup> At least one other CLEC, however, has voiced the concern that requiring Qwest to make publicly available all BFRs to other CLECs raises important competitive issues.<sup>80</sup> A regime under which Qwest must disclose immediately to all

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<sup>78</sup> See SGAT § 17.12 (including and defining the term "substantially similar").

<sup>79</sup> Ex. 6-Qwest-83 (Multi-State Tr. [6/25/01]) at 116.

<sup>80</sup> See *id.* at 117-18 (New Edge indicating that it would *not* "want Qwest to release information on what New Edge is doing" to other CLECs); see also *id.* at 135-36; see also CO Tr. (8/21/01) at 80 (Brotherson) (noting, in this context, specific requests by CLECs to maintain confidentiality of such information).

other CLECs a unique UNE combination developed by one competitor to seize a competitive advantage and for which it claims proprietary or trade secret protection does not adequately take these issues into account.

Second, the CLECs acknowledge the proprietary nature of this information by qualifying their request for disclosure by their simultaneous request that certain information provided by CLECs in the BFR process (including the identity of the requesting CLEC and the location of the BFR) remain undisclosed.<sup>81</sup> The folly of the CLECs' position on this issue is underscored by the fact that the location of the request is one of the criteria used by Qwest to determine technical feasibility, as set forth in the agreed-to language of sections 17.2.1 through 17.2.6.

AT&T has attempted to bolster its claim that it needs to be notified of BFRs submitted by others by attacking substance of Qwest's BFR review processes. In particular, in briefing submitted in other proceedings, AT&T has alleged that a "single non-technical person" at Qwest reviews all BFRs and makes a determination of substantial similarity between requests. This allegation is false. The record establishes that a team of subject matter experts, including network and technical personnel, are involved in the analysis of BFRs and that substantial similarity is determined by the criteria set forth in the SGAT in section 17.2.1 through 17.2.6.<sup>82</sup>

Finally, the insistence by some of the CLECs in this proceeding that Qwest disclose the specifics of BFRs through a "notification process" simply cannot be squared with the obligations those same CLECs have insisted upon in their actual interconnection agreements with Qwest. For example, in its agreement with Qwest in Colorado and Arizona, AT&T insists that Qwest strictly maintain the confidentiality of the very types of information that AT&T now argues

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<sup>81</sup> See CO Tr. (8/21/01) at 69-71.

<sup>82</sup> See *id.* at 58-59.

should be disclosed through its proposed BFR notification process.<sup>83</sup> Indeed, were the Commission to adopt the approach proposed by the CLECs here on this issue, it would place Qwest in the untenable position in Arizona of either (a) complying with its existing interconnection agreements requiring nondisclosure to the breach of its SGAT obligations or (b) complying with the SGAT provisions requiring disclosure to the breach of its contractual obligations in individual CLEC agreements such as AT&T's which forbid disclosure. The Commission should reject the CLECs' misguided proposals.

Rather than viewing the issue from only one side, Qwest's case-by-case approach balances the competing interests of the innovator CLEC in keeping its competitive advantage against the interests of other CLECs in being treated in a nondiscriminatory manner. CLECs' proposal should be rejected.

## **2. The CLECs' Demand that Qwest "Productize" BFRs is Unnecessary.**

CLECs have raised an additional issue regarding discrimination among CLECs and the BFR process. This issue relates to when is it appropriate for Qwest to "productize" BFRs. That is, at what point would Qwest determine that a given BFR should be included in the standard offerings set forth in the SGAT? While it is not clear how many BFRs CLECs would require before productization would be appropriate, they plainly propose that Qwest commit to a definite number, after which, regardless of any reasonable forecasts to the contrary, Qwest must make the BFR a standard offering.

The weakness of the CLECs' position on this issue is highlighted by their inability to present an alternative grounded in anything more than mere speculation. Indeed, at the hearing counsel for WorldCom admitted that his attempts to come up with a specific number of BFRs

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<sup>83</sup> See, e.g., Qwest/AT&T Interconnection Agreement (Colorado), § 22; Qwest/AT&T Interconnection Agreement (Arizona), § 28.

that would trigger productization involved nothing more than his "pulling it out of the air."<sup>84</sup> Moreover, when pressed on this issue, counsel for AT&T conceded that "the ultimate decision" of when to productize BFRs is best left "in Qwest's hands."<sup>85</sup>

Qwest, on the other hand, has proposed making a given BFR a standard offering when, in the exercise of its sound discretion informed by its experience and business judgment, it appears that a trend is beginning or it otherwise makes sense to make the BFR a standard offering. Because of the effort it must incur to address individual BFRs, Qwest has little incentive to unreasonably avoid productizing them.

**3. AT&T's Belated Attempt to Expand the Scope of SRPs Is Inappropriate.**

At this and other proceedings, AT&T has raised the issue of adding items to be covered by the SRP. In response, Mr. Brotherson correctly pointed out that such requests were beyond the scope of this proceeding in that the only issue deferred to the general terms and conditions workshop was the issue of what the SRP *process* would entail.<sup>86</sup>

This workshop is held to deal with process. The time for dealing with items to be included in that process has passed. AT&T's attempt to reopen issues already considered and resolved in previous workshops – in this case, what items should be subject to the SRP – should be rejected.

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<sup>84</sup> See CO Tr. (8/21/01) at 87 (Dixon) ("My three requests in six months [proposal] was pulling it out of the air.").

<sup>85</sup> See *id.* at 86 (Friesen) ("I think we'd continue to leave the ultimate decision in Qwest's hands.").

<sup>86</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 149 [confirm date].

#### **4. The CLECs' Alleged Discrimination Concern Is a Red Herring.**

Following a pattern employed in other workshops, after Qwest had proposed revised SGAT language to accommodate the CLECs, they then began to request information regarding issues nowhere addressed in their pre-filed testimony relating to so-called "retail parity" and the BFR process. That is, the CLECs now seek to explore how Qwest handles requests from Qwest retail personnel for new services. They are interested in issues such as whether Qwest has a similar BFR-like process for retail services and how Qwest processes Special Assembly or Special Arrangements under its tariffs on the retail side.

While these inquiries may seem, at first glance, relevant, the attempted comparison of Qwest "retail" offerings and those offered to CLECs under the Act is misplaced. There simply is no corresponding BFR-like process for retail services because Qwest does not sell interconnection and UNEs to retail customers. Nevertheless, in an effort to try to respond in a timely manner to the CLECs' belated requests on this issue in the Arizona workshop, Qwest quickly canvassed retail personnel for information as to how retail customers' requests for Special Assembly or Special Arrangements are handled. Qwest subsequently described a system known as Automated Quote and Contract Billing ("AQCB"), which is used by retail sales personnel to compute a price for certain tariffed services and establish a contract with the customer, based, for example, on volume and term discounts. This method of pricing is sometimes referred to as custom pricing, or individual case basis pricing, and hence was initially thought to be helpful to the workshop discussions.

At subsequent workshop proceedings, however, Qwest clarified that it does not have a formal process for handling requests for unique, non-tariffed services.<sup>87</sup> Rather, Qwest handles such requests on an individual case basis in which there are no timeframe commitments for

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<sup>87</sup> See *id.* at 108-112.

responses such as those afforded to CLECs in SGAT section 17, and Exhibits F and I, and as to which Qwest enjoys a good deal of discretion.<sup>88</sup>

In sum, because there is no retail analogue to the BFR process, the CLECs' late-raised interest in retail performance and process relating to unique services is a red herring. In any event, the provisions governing the BFR, SRP, and ICB processes Qwest has proposed are reasonable and do not discriminate among CLECs. Moreover, even assuming some ability to compare the two in a meaningful way, in raising their last-minute concerns regarding Qwest retail performance and process, the CLECs have provided no evidence of alleged disparate treatment between Qwest retail and CLEC performance. Absent any factual record providing a basis for a contrary outcome, the Commission should adopt Qwest's proposed language.

**K. Section 18 – Qwest's Examination Proposals Are Reasonable and Balanced.**

**1. The CLECs' Attempt to Expand the Scope of Audits to Performance-Related Issues and the Treatment of Confidential Information Is Wholly Unwarranted.**

AT&T argued that the scope of an examination under section 18 should not be limited to billing-related issues.<sup>89</sup> Instead, AT&T claimed that all specifications of Qwest's performance, including its processes and adherence to contracts, should be subject to section 18 examinations.<sup>90</sup> AT&T stated that it needs these audits to insure that Qwest will meet its obligations. The Commission should reject AT&T's position because the SGAT already contains

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<sup>88</sup> See *id.* at 108-109. For example, Qwest's Access Service Price Cap Tariff in Arizona provides that Qwest "may" provide specialized service or arrangements "on an individual case basis if such service or arrangements meet certain criteria, one of which is "[t]he requested service or arrangements are compatible with other [Qwest] services, facilities, and its engineering and maintenance practices." See Arizona Access Service Price Cap Tariff, § 11.1 (available online at <http://tariffs.uswest.com/eldocs/TARIFFS/Arizona/AZAPC>).

<sup>89</sup> Ex. 6-Qwest-82 (Hydock WA Aff.) at 69.

<sup>90</sup> *Id.*

several, more appropriate mechanisms to insure Qwest's performance, and examinations are not the proper method to address performance related issues.

First, the SGAT contains a detailed and comprehensive dispute resolution process. If AT&T believes that Qwest failed to perform as required by the SGAT, AT&T can initiate dispute resolution proceedings pursuant to section 5.18. This process was specifically designed to handle disputes regarding performance issues. An open examination of Qwest's records is not necessary.

Also, the dispute resolution process will provide CLECs with any relevant information they require. Section 5.18.3.2 provides for the exchange of documents deemed necessary to an understanding and determination of the dispute.<sup>91</sup> Thus, if CLECs have performance related issues, they will not be deprived of information by invoking the dispute resolution provisions. Indeed, if the scope of examinations is expanded to include non-billing issues, CLECs could effectively circumvent Section 5.18.3.2. Instead of obtaining documents through discovery, the CLECs would only need to conduct an examination. CLECs should not be permitted to use examinations to expand the discovery provisions of section 5.18.3.2.

Furthermore, the dispute resolution process is preferable over an examination because the dispute resolution process insures resolution of the issue. Under an examination, all that occurs is information gathering. Disputes are not settled. If an examination reveals some legitimate discrepancy that raises a genuine dispute, a dispute resolution proceeding would need to be initiated.

Second, the scope of the examination should not be expanded beyond billing issues. To do so would enable CLECs to harass and overly burden Qwest. If CLECs were allowed to examine all Qwest processes, they could use examinations as "fishing expeditions." They could require Qwest to produce large amounts of information under the sole ground that the

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<sup>91</sup> SGAT § 5.18.3.2.

information is relevant to the operation of the SGAT. Qwest would suffer substantial disruption to its business with little justification. Clearly, CLECs should not be given carte blanche authority to examine every aspect of Qwest's business. AT&T's request is overly broad, and examinations should be limited to billing issues.

In the event the Commission adopts AT&T position, however, Qwest specifically objects to the expense provision, section 18.2.8, in its current form. Section 18.2.8 was developed under the expectation that examinations would be limited to billing issues. If the scope of examinations is expanded, Qwest is not willing to pay for the examination if the results show a discrepancy or problem. The cost of these examinations should be borne by the requesting party regardless of the outcome.

**2. Qwest's Proposal Adequately Protects Confidential Information Disclosed During the Course of Audits.**

With little explanation, AT&T has, in other proceedings, claimed that section 18.3 is at impasse. AT&T has stated that the language of section 18.3 was appropriate and acceptable. Despite this representation, however, AT&T has claimed that Qwest implementation of 18.3 is troublesome. Qwest is unclear as to AT&T's specific concern with section 18.3 and why AT&T brought this issue to impasse.<sup>92</sup> The language of section 18.3 is consensus language that AT&T approved. To the extent that AT&T's comments reflect its issues with Section 5.16.9, Section H of this brief appropriately addresses AT&T's comments. Further, Qwest agreed to add the following language to section 18.3 that satisfies any legitimate concern of AT&T:

Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail, marketing, sales or strategic planning.

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<sup>92</sup> Indeed, AT&T did not address SGAT § 18.3 at all in its brief filed on July 27, 2001, in the multi-state proceeding on general terms and conditions, and only devoted only one paragraph consisting of seven lines to the whole of SGAT § 18 there.

Accordingly, the Commission should adopt Qwest's proposed language.

**L. Section 12.3.8.1.5 – There Are No Open Issues Regarding Marketing to Misdirected Repair Center Calls.**

The issue of marketing to consumers calling either party's repair centers has been resolved by the parties' agreement to import the resolution of this issue from the Resale Workshop. In accordance with the Commission's order in that workshop, Qwest has added the phrase "seeking such information" to the end of section 6.4.1. and the end of SGAT section 12.3.8.1.5. With these modifications, this issue is resolved.

**M. Definitions – Qwest's Definition of "Legitimately Related" Should Be Adopted.**

WorldCom appended to its testimony over 229 definitions that it proposed be included in the SGAT.<sup>93</sup> However, apart from the blanket statement that "to the extent that a definition has not been previously agreed upon, and has not been discussed, WorldCom's definition should be used and Qwest's replaced,"<sup>94</sup> WorldCom offered no substantive prefiled testimony in support of its proposed definitions.

The parties have, through good faith negotiations, however, been able to reach agreement as to all but one definition – "legitimately related" – which was not included in WorldCom's original list but remains at impasse.

As set forth above, Qwest proposes the following definition of "legitimately related" to be included in section 4.0:

"Legitimately Related" terms and conditions are those rates, terms and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken

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<sup>93</sup> See Ex. 6-Qwest-82, Direct Testimony of Michael W. Schneider in Washington proceeding, dated June 7, 2001 ("Schneider WA Dir. Part B – Definitions").

<sup>94</sup> *Id.* at 13.

together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

Although developing precise standards to determine when a provision is "legitimately related" is difficult given the vast differences between cases, this definition appropriately describes the scope of the term "legitimately related." This definition also properly encompasses the principles detailed in paragraph 1315 of the FCC's *First Report and Order* pertaining to "legitimately related" provisions.<sup>95</sup> There, the FCC made clear that a common sense approach to evaluating what is and is not a legitimately related term or condition should prevail. Qwest's definition embodies that approach and should be adopted.<sup>96</sup>

### III. CONCLUSION

For the foregoing reasons, Qwest's proposed general terms and conditions comport with the requirements of the Act and FCC. Accordingly, Qwest requests that the Commission adopt Qwest's proposals for SGAT provisions relating general terms and conditions that are at impasse.

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<sup>95</sup> See *First Report and Order* ¶ 1315.

<sup>96</sup> On a related issue, AT&T has raised the issue of the burden of demonstrating whether a provision is legitimately related. Section 1.8.1 of the SGAT affirmatively states Qwest's burden of proof regarding this issue by providing: "At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related."

DATED this 17th day of September, 2001

Respectfully submitted,

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## Section 1.0 - GENERAL TERMS

1.1 This Statement of Generally Available Terms and Conditions (SGAT) for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is filed by Qwest Corporation (Qwest), a Colorado Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 ~~If this document is being used as the basis for negotiations of an Interconnection Agreement, it is between \_\_\_\_\_, (Competitive Local Exchange Carrier or CLEC) a \_\_\_\_\_ corporation and Qwest Corporation (Qwest), a Colorado corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.~~ Intentionally Left Blank

1.3 This Agreement ~~SGAT~~ sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties ~~Qwest is~~ are providing local Exchange Service ~~exchange service~~ at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of Arizona for purposes of providing local Telecommunications Services. This Agreement ~~SGAT~~ is available for the term set forth herein.

1.4 Individual CLECs may adopt this SGAT, in lieu of entering into an individually negotiated Interconnection agreement, by signing the Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT to Qwest, pursuant to the ~~notification~~ notice provision of this SGAT contained in Section 5.21. ~~Upon adoption of the~~ The date on SGAT by CLEC, the SGAT becomes an Interconnection agreement which Qwest receives an executed copy of this SGAT shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Qwest shall notify CLEC of the Effective Date pursuant to the notice provision. The Parties shall satisfy all state Interconnection agreement filing requirements.

1.5 This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual Interconnection agreement with Qwest, or adopting an existing approved Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect Qwest's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.

1.6 ~~Qwest may modify this SGAT prior to the date it is approved or permitted to go into effect. If Qwest files a modification, the section modified shall be considered withdrawn, and the section as modified will be approved or permitted to go into effect pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of the Schedule for Review set forth in section 252(f) of the Act, the sixty (60) day timeframe for this SGAT to take effect shall commence from the filing of this SGAT and shall not be affected by the filing of any modification.~~

1.7 ~~Following the date this SGAT is approved or allowed to take effect, Qwest may file amendments to this SGAT, which shall be approved or permitted to take effect pursuant to the~~

~~Schedule for Review set forth in Section 252(f) of the Act. At the time any amendment is filed, the section amended shall be considered withdrawn, and no CLEC may adopt the section considered withdrawn following the filing of any amendment, even if such amendment has not yet been approved or allowed to take effect.~~

~~1.7.1 Notwithstanding the above or anything contained in Section 1 of this Agreement, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this Agreement, no formal amendment to the Interconnection agreement is necessary. Qwest will notify CLEC of the availability of these new services through the product notification process through the Co-Provider Industry Change Management Process (CICMP). CLEC must first update the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. Then by placing its orders, CLEC agrees to abide by all of the then current rates, terms and conditions as set forth in the then current template agreement applicable to such new services. If CLEC wishes to negotiate an amendment with different terms and conditions than defined in the then current template agreement, CLEC agrees to abide by those terms and conditions until the amendment is approved and a parallel processing letter agreement is executed.~~

~~1.8 This SGAT represents Qwest's standard contract offer and, as such, CLECs with a current Interconnection agreement may opt into, any individual Interconnection, service, or network element arrangement in this SGAT, in accordance with Section 252(i) requirements in the Telecommunications Act of 1996, and the Washington Utilities and Transportation Commissions' Interpretive and Policy Statement issued in Washington Docket UT 990355, by executing an appropriate amendment to its current Interconnection agreement.~~  
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1.7 Once this SGAT is approved or permitted to go into effect, any amendment to the SGAT by Qwest will be accomplished through Section 252 of the Act. When Qwest files an amendment to the SGAT with the Commission, Qwest shall provide notice of such filing through the Co-Provider Industry Change Management Process (CICMP). Qwest shall also request that the Commission notify all interested parties of the filing. In addition, any amendment to the SGAT filed by Qwest shall have no effect on the SGAT (either to withdraw or replace effective provisions or to add provisions) until such amendment is approved by the Commission or goes into effect by operation of law. Once CLEC executes Section 22 and delivers a signed copy to Qwest pursuant to the notice provisions of this SGAT, the currently effective SGAT will become the Interconnection Agreement between the CLEC and Qwest (this Agreement), and shall be subject to the same rules and laws as other Interconnection Agreements in effect in this state. Once this SGAT becomes the Interconnection Agreement between CLEC and Qwest, this Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the CICMP. CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. In addition, the

Parties shall amend this Agreement under one (1) of the following two (2) options:

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, CLEC agrees to abide by those terms and conditions on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates, and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 Because this SGAT is Qwest's standard contract offer, CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, Qwest may require CLEC to accept legitimately related provisions to ensure that the provision retains the context set forth in the SGAT. At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are legitimately related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are legitimately related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not legitimately related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical, or other considerations. In extraordinary

circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.3 If Qwest has identified additional provisions that Qwest believes are legitimately related and has specified provisions in the proposed amendment to which those provisions are not legitimately related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are legitimately related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection agreement, as appropriate. Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorney's fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorney's fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorney's fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Arizona Commission.

## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement (~~Agreement~~) includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. ~~The headings and numbering of Sections and Exhibits used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule or Tariff applies to such agreement, instrument, statute, regulation, rule or Tariff as amended and supplemented from time to time, (and, in the case of a statute, regulation, rule or Tariff, to any successor provision). This Agreement ("Agreement") includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule, or Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition agreement, instrument, (including any amendments, supplements, addenda, or successors) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards that is in effect as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision). Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule, regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of telecommunications industry administrative or technical standards.~~

2.2 The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). Among the Existing Rules are the results of arbitrated decisions by the Commission which are currently being challenged by Qwest or intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of the date hereof (the "Existing Rules"). Nothing in this Agreement shall be deemed an CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in AT&T Corp., et al. v. Iowa Utilities Board, et al. on January 25, 1999. Many of the Existing Rules, including rules concerning which network elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme

~~Court opinion. Among the Existing Rules are the FCC's orders regarding BOCs' applications under Section 271 of the Act. Qwest is basing the offerings in this Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by Qwest concerning the interpretation or effect of the Existing Rules or an admission by Qwest that the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. This Section 2.2 shall be considered part of the rates, terms and conditions of each Interconnection, service and network element arrangement contained in this Agreement, and this Section 2.2 shall be considered legitimately related to the purchase of each Interconnection, service and network element arrangement contained in this Agreement.~~

~~2.3 In cases of conflict between Qwest's wholesale Product Catalog (PCAT) (formerly IRRG), product descriptions, methods and procedures, or a technical publication, and this Agreement, the rates, terms and conditions of this Agreement shall prevail over such PCAT product descriptions, methods and procedures, or a technical publication.~~

~~2.4 This SGAT will take effect by operation of law pursuant to Section 252 (f)(3)(B) of the Act within sixty (60) days of its submission to the Commission. While the SGAT is "in effect", Qwest will not represent the SGAT as Commission approved. The Commission also retains authority to review this SGAT after it is "in effect".~~

~~Section 3.0 IMPLEMENTATION SCHEDULE admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed, or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to agree on an amendment during~~

the 60 day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

2.3.1 If either Party believes, in good faith, that a change in Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT abridges or expands its rights or obligations under this SGAT and that change has not gone through CICMP, the Parties will resolve the matter under the Dispute Resolution process. Any amendment to this Agreement that may result from such Dispute Resolution process shall be deemed effective on the effective date of the change for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of the Dispute Resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to resolve the dispute during the first sixty days after the CLEC institutes Dispute Resolution, the Parties agree that the first matter to be resolved during formal Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of formal Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented.

### Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. ~~The date on which CLEC signs and delivers an executed copy of this Agreement, in accordance with Section 1, shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Thereupon, the Parties shall complete Qwest's "CLEC Questionnaire," and negotiate an Interconnection implementation schedule as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.~~

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New CLEC Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

Qwest's "CLEC Questionnaire"-3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire for Qwest to continue processing new orders. This questionnaire will then be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

~~3.3 Prior to placing any orders for services under this Agreement, the Parties will finalize an Interconnection implementation schedule. Subject to the terms and conditions of this Agreement, each Party shall exercise reasonable efforts to adhere to the Interconnection implementation schedule.~~ 3.2.12 CLECs that have previously completed a Questionnaire need not fill out a new CLEC Questionnaire; however, CLEC will update its CLEC Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest if no changes in the information required have occurred. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this aAgreement, which may include an amendment pursuant to Section 1.7.1.

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## Section 4.0 – DEFINITIONS

4.1 ————“Access Service Request” or “ASR” means the industry guideline standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

4.2 ————“Access Services” refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

“Access Tandem Switch” is a switch used to connect End Office Switches to interexchange Carrier switches. Qwest’s Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

4.3 ————“Act” means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

“Advanced Intelligent Network” or “AIN” is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

“Advanced Services” refers to high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video telecommunications using any technology.

“Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.

“AMI T1” is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

“Applicable Law” means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

4.4 ————“Application Date” or “APP” means the date CLEC provides Qwest a firm commitment and sufficient an application for service containing required information to provide service as set forth in this Agreement.

“ATIS” or “Alliance for Telecommunications Industry Solutions” is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and interconnection for telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Location Identification" or "ALI" is a the automatic display at the Public Safety Answering Point ("PSAP") of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

~~4.5 "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.~~

"Automatic Number Identification" or "ANI" is the billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit switch routing table or system.

~~4.6 "Basic Exchange Features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.~~

4.7 "Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process

claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

4.8 ———— "Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17. ~~means a request for a new Interconnection or unbundled element not already available in this Agreement for the provision of local Telecommunications Services.~~

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User and the Serving Wire Center or extending beyond the End User Customer's location.

4.9 ———— "Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

4.10 ———— "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter, (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

4.11 ———— "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

4.11.1 ———— "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

4.11.2 ———— "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the samea comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact-based consideration of geography and function should be used to classify any switch. Qwest Aaccess Tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact based consideration of geography or function should be used classify any switch.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Centrex" shall have the meaning set for the in Section 6.2.2.9.

"CLC" or "Carrier Liaison Committee" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

4.12 ~~—————"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest unbundled network elements.~~ Unbundled Network Elements. Qwest offers eight (8) Collocation arrangements: Virtual Collocation, Caged Physical Collocation, Cageless Physical Collocation, Shared Caged Physical Collocation, Adjacent Collocation, Interconnection Distribution Frame Collocation, Common Area Splitter Collocation, and Remote Collocation.

4.12(a) ~~—————"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where the CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.~~

4.13 ~~—————"Commission" means the \_\_\_\_\_.~~

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

4.14 ~~—————"Common Channel Signaling" or "CCS" means a method of digitally transmitting call set up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.~~

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

4.15 ~~—————"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to Sections 1 and 3 of this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications~~

Services pursuant to the terms of this Agreement. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data " means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between locations designated by CLEC to which a CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest wire centers, Qwest End Office Switches, and Qwest Tandem Switches. The path may operate at DS-1 or higher transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

4.16 ——— "Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a

service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

4.17 ————"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

4.18 ————"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

4.19 ————"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from

the End User Customer to the Central Office) over one copper pair.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Sections 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Assistance Lists" shall have the meaning set forth in Sections 10.6.1.1.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and

facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 1.4.

"Electronic Bonding" is real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more eCarriers.

4.20 ——— "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with additional, different or restructured information; or involve End-User Customer subscriber end-user interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Sections 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

4.30 — "Exchange Access (IntraLATA Toll)" as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the SGAT shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

4.21 ——— "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a ~~Bellcore~~ Telcordia document that defines industry standards for exchange message records.

4.22 ——— "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling areas ~~defined by Qwest's then current EAS/local serving areas, and as as determined by the Commission.~~

4.23 ——— ~~"Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.~~

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed-upon location.

4.23 (a) ——— "Finished Services" means complete end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

4.24 ——— ~~"Firm Order Confirmation Date" "Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.~~

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

4.24(a) ——— ~~Individual Case Basis or- (ICB) shall have the meaning set forth in Exhibit I. - Each UNE or resale product marked as ICB will be handled individually on a pricing and/or interval commitment basis. Where ICB appears, CLEC should contact their account team for pricing, ordering, provisioning or maintenance information.~~

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"INP" or "Interim Number Portability" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network with as little

impairment of quality, reliability and convenience to the customer as possible, but does not comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23 (a).

4.25 ~~————~~ "Integrated Digital Loop Carrier" means a subscriber ~~loop~~Loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

4.26 ~~————~~ "Interconnect & Resale Resource Guide" (IRRG) is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the IRRG. The IRRG is available on Qwest's Web site:

~~————~~ <http://www.uswest.com/carrier/guides/interconnect/index.html>. Intentionally Left Blank

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

4.27 ~~————~~ "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When a CLEC signs and delivers a copy of this SGAT to Qwest pursuant to the notice provision of the SGAT, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(f) of the Act.

4.28 ~~————~~ "Interexchange Carrier" or "IXC" means a carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

4.29 ~~————~~ "Internet Related Traffic" refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately related" terms and conditions are those rates, terms, and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and aconditions are those that, when taken together, are the necessary rates, terms and condtions for establishing the business relationship between the Parties as to that particular interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

4.31———"Local Exchange Carrier" or "LEC" means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXC's to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

4.32———"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Sswitch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

4.33———"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP shall have the meaning set forth in Section 10.2.1.1.

4.34———"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1. ~~"Local Loop Transmission" or "Loop" or "Unbundled Loop" is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC Central Office and the loopcentral office and the Loop demarcation point at an end user's premises, including inside wire owned by the incumbent LEC. The local looppremises. The Local Loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber,Dark Fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers (DSLAM)), and line conditioning. The local~~

~~loop~~Local Loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.~~Loops.~~

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and billing processes for ordering local services.

4.35———"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

4.36———"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the Qwest technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the Qwest technician performs work on a business day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply

when the Qwest technician performs work on either a Sunday or Qwest-recognized holiday.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.39 ——— "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service including phone to phone voice interexchange traffic that is transmitted over a carrier's packet-switched network using protocols such as TCP/IP to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

4.40 ——— "Mid-Span Meet" means an Interconnection between two networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities. The Meet Point is the demarcation establishing ownership of and responsibility for each Carrier's portion of the transmission facility; provided however, this definition does not impact the cost recovery for use of the facilities. is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.40(a) ——— "Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance.- Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A, and include the following activities or charges: additional engineering, additional labor installation, additional labor other, testing and maintenance, maintenance of service, additional cooperative acceptance testing, nonscheduled cooperative testing, nonscheduled manual testing, additional dispatch, date change, design change, expedite charge and cancellation charge. These activities are described in Qwest's Access Services Tariff.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for

access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the carrier in the call routing process immediately preceding the terminating carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of telecommunications service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for maintenance and repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Sections in 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

4.41 ——— "North American Numbering Plan" or "NANP" means the basic numbering plan for the telecommunications networks located used in the United States that also serves as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

4.42 ——— "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where technically feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User customers, its Affiliates or to any other party.

4.43 ——— "Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes

to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

4.44 ——— "Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

4.45 ——— "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

4.46 ——— "Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office switch but does not include switch features. The Port serves as the hardware termination for line or trunk side facilities connected to the Central Office switch. Each line side port is typically associated with one or more telephone numbers that serve as the customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density or "PSD" Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

4.46(a) ——— "Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing ~~loop~~Loop eConcentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

4.46(b) ——— "Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pcat/>

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7.

4.47 ——— "Proof of Authorization" ("POA"). POA shall consist of verification of the end user's

selection and authorization adequate to document the end user's selection of its local service provider. ~~Section 5.3 of this Agreement lists acceptable forms of documentation.~~

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or "Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center; and 2) the corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLEC) for its provision of Telephone Exchange Services.

4.49 ~~———"Rate Center Area" is the geographic area within which basic exchange services~~Basic Exchange Services are provided for NPA-NXX designations associated with a particular Rate Center.

4.49 (a) ~~———"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for provisioning by the RFS date.~~

4.50 ~~———"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.~~

"Remote Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network. If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User

Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

4.50(a) ~~————~~ "Remote Premises" means all Qwest Premises ~~as defined in 4.46(a), other than Qwest Wire Centers or adjacent to Qwest Wire Centers.~~ Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital loop carriers, fiber hubs, DSLAMs, etc.

4.51 ~~————~~ "Reseller" is a category of local exchange service ~~Local Exchange Service~~ provider that obtains dial tone and associated Telecommunications Services from another provider through the purchase of finished services for resale to its end users.

"Reseller" is a category of ICLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

4.52 ~~————~~ "Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

4.53 ~~————~~ "Service Control Point" or "SCP" means a signaling end point that acts as a database to provide information to another signaling end point (i.e., Service Switching Point or another SCP) for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with an SCP.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

4.54 ————"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

4.55 ————"Service Date" or "SD" means the date service is made available to the End U-user Customer. This also is referred to as the "Due Date."

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

4.56 ————"Signaling Transfer Point" or "STP" means a ~~p~~Packet ~~s~~Switch signaling point that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part ("MTP"), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part ("SCCP"), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part ("ISUP"), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part ("TCAP"), which provides for transfer of non-circuit related information between signaling points.

"Special Request Process" or (SRP) shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two Copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of crosstalk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all loop lengths, model loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or ("SATE") shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, ~~and Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.~~

4.57 ——— "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, ~~Phone to Phone IP Telephony, 8XX access, and 900 access and their successors or similar Switched Access services.~~Services.

"Switched Access Traffic" as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association ("ECSA") for the American National Standards Institute ("ANSI").

4.58 ——— "Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules~~and catalogs.~~

"Technically Feasible." Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

4.59 ——— "Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises

Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

4.60 ————“Telecommunications Services” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Telephone Exchange Service” means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

“TELRIC” means Total Element Long-Run Incremental Cost.

“Toll Free Service” means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

“Transaction Set” is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary transaction sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

“Trunk Side” refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

“Unbundled Network Element” is a network element that has been defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, or for which unbundled access is provided under this Agreement.

4.61 ————“Unbundled Network Element Platform (UNE-P)” – is ~~apre-existing combination of unbundled network elements, Unbundled Network Elements as set forth in Section 9.23, including, but not necessarily limited to, a NID, Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including but not limited to single line residence, single line business, and PBX Trunks.~~

4.62 ————“UNE Combination” means ~~a pre-existing combination of legally binding and effective Section 251(c)(3) unbundled network elements that have been defined to meet the necessary and impair requirements of Section 251(d)(1). UNE Combinations are provided to CLEC in its pre-existing combined state, on an “as is” combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest’s network, as required by the FCC, the or Commission or this Agreement. provided for in this Agreement. basis, and at Section 252(d)(1) rates. UNE Combinations include UNE-P and Private Line Combinations.~~

“Virtual Collocation” shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

4.63 ————"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Cearrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

4.64 ————"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

4.65 Terms not otherwise defined here, but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

## Section 5.0 - TERMS AND CONDITIONS

### 5.1 General Provisions

5.1.1 ~~Each Party shall use its best efforts to comply with the Implementation Schedule provisions that will be mutually agreed upon by the Parties.~~ Intentionally Left Blank

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end-users. ~~Each End User Customers.~~ In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1. If such impairment is material and poses an immediate threat to the safety of either Party's employees, customers or the public or poses an immediate threat of a service interruption operational or physical integrity of the other Party's facilities, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates this provision or refuse to provide the same type of service if it reasonably appears that that particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other party shall provide written notice within five (5) calendar days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar

days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, unbundled network

5.1.7 A Telecommunications Carrier that receives or obtains proprietary information from another carrier for purposes of providing any Telecommunications Services shall use such information only for such purpose, and shall not use such information for its own marketing efforts, elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

## **5.2 Term of Agreement**

5.2.1 This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act. The date on which CLEC submits a written request, on the date set forth in Section 41.4 pursuant to Section 3.1 of this Agreement, to obtain services pursuant to this Agreement shall hereafter be referred to as the "Effective Date" of this Agreement between CLEC and Qwest. 252 of the Act. This Agreement shall be is binding upon the Parties upon the Effective Date and for a term of two (2) years and shall terminate expire on \_\_\_\_\_ two (2) years from the Effective Date.

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in force and effect until terminated by either Party on one hundred sixty (160) days written notice to the other Party. The date of this notice will be the starting point for the one hundred sixty (160) day negotiation window under Section 252 of the Act. If the Parties reach agreement, this Agreement will terminate on the date specified in the notice or on the date the Agreement is approved by the Commission, whichever is later. If the Parties arbitrate, this Agreement will terminate when the new Agreement is approved by the Commission.

5.2.2.1 ~~———— Prior~~ Prior to the conclusion of the ~~two (2) year term specified in Section 5.2.1 above,~~ CLEC may obtain Interconnection services under the terms and conditions of a then-existing Agreement ~~SGAT or agreement~~ to become effective at the conclusion of the ~~two (2) year term term or prior to the conclusion of the term if CLEC so chooses.~~

### 5.3 Proof of Authorization

5.3.1 ~~Where so indicated in specific sections of this Agreement, each~~ Each Party shall be responsible for obtaining and ~~maintaining having in its possession~~ Proof of Authorization (POA). ~~POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained in the following ways: (POA) as required by applicable federal and state law, as amended from time to time.~~

5.3.1.1 ~~———— The end user's electronic or written Letter of Authorization.~~

5.3.1.2 ~~———— The end user's electronic authorization by use of an 8XX number.~~

5.3.1.3 ~~———— The end user's oral authorization verified by an independent third party (with third party verification as POA).~~

5.3.2 ~~The Parties shall make POAs available to each other upon request request in the event of an allegation of an unauthorized change in accordance with all applicable laws and rules. Unless prohibited by applicable laws or regulations, a charge equal to the amount of the Customer Transfer Charge as reflected on Exhibit A (slamming charge) will be assessed if the POA cannot be rules and shall be subject to any penalties contained therein.~~ provided supporting the change in service provider. ~~If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.~~

### 5.4 Payment

5.4.1 ~~Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.~~ calendar days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a business day, the payment shall be due the next business day.

5.4.2 ~~Qwest may discontinue processing orders for the failure of CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within thirty (30) days of the due date on CLEC's bill. Qwest will notify CLEC in writing at least ten (10) days prior to discontinuing the processing of orders. If Qwest does not refuse to accept additional orders on the date specified in the ten (10) days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders from the noncomplying CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest may require a deposit (or additional deposit) from CLEC, pursuant to this section.~~

~~5.4.3 Qwest may disconnect any and all services for failure by CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) days of the due date on CLEC's bill. CLEC will pay the Tariff charge required to reconnect each resold end user line disconnected pursuant to this paragraph. Qwest will notify CLEC in writing at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the ten (10) days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all services of the noncomplying CLEC without further notice. For reconnection of service to occur, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest will request a deposit (or additional deposit) from CLEC, pursuant to this section. Qwest agrees, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles.~~

~~5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing under this Agreement, the Parties will notify each other in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. CLEC and Qwest shall pay all amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. If the resolved amount does not appear as a credit on the next invoice after resolution of the dispute, the resolved amount plus interest from the date of payment will be applied. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it not been paid on time. Similarly, in the event a Party withholds payment for a disputed charge, and upon resolution of the matter it is determined that such payments should have been made, the billing Party is entitled to collect interest on the withheld amount, subject to the above provisions.~~

~~5.4.5 Qwest will determine CLEC's credit status based on previous payment history with Qwest or credit reports such as Dun and Bradstreet. If CLEC has not established satisfactory credit with Qwest or if CLEC is repeatedly delinquent in making its payments, Qwest may require a deposit to be held as security for the~~  
5.4.2 One Party may discontinue processing orders for the failure of the other party to make full payment for the relevant service, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar days following the payment due date. The billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.3 The billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar

days following the payment due date. The billed Party will pay the applicable reconnect charge set forth on Exhibit A required to reconnect each resold end user line disconnected pursuant to this paragraph. The billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business day notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant service. Additionally, the billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the non-recurring nonrecurring charges or monthly billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date -identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by CLECthe other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the disputed charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, at any timeand the dispute is resolved in favor of the disputing Party, the billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or

applicable state statutes or commission rules.

5.4.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the billing Party due to a previous nonpayment situation, the billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or ~~payment of charges before reconnection of service.~~ "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the payment due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) period months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to ~~Qwest~~the billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ~~ten (10)~~thirty (30) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, ~~regulations, or Tariffs regulations.~~ Cash deposits and accrued interest will be credited to ~~CLEC's~~the billing Party's account or refunded, as appropriate, upon the expiration earlier of the two (2) year term of the Agreement or the establishment of satisfactory credit with the billing Qwest Party, which will generally be one full year of timely payments of undisputed amounts in full by CLEC-the billed Party. Upon a material change in financial standing, the billed Party may request and the billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 ~~Qwest~~The billing Party may review ~~CLEC's~~the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 ~~CLEC agrees to inform end user in writing of~~Each Party shall be responsible for notifying its End-User Customers of any pending disconnection by CLEC to allow end user of a non-paid service by the billed Party, if necessary, to allow those customers to make other arrangements for Telecommunications Services-such non-paid services.

## **5.5 Taxes**

5.5.1 ~~Each Party purchasing services hereunder shall pay or otherwise be responsible for all~~Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to)resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is the purchasing Party-such taxes, fees or surcharges), except for any tax on either Party's placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges from the

purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## **5.6 Insurance**

5.6.1 ~~CLEC~~Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII-B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by ~~CLEC~~each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 ~~Comprehensive~~Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the premises. ~~CLEC may elect to purchase business interruption and contingent business interruption insurance. Qwest~~

~~has no liability for loss of profit or revenues should an interruption of service occur.~~

5.6.2 ~~CLEC shall~~Each Party will initially provide certificate(s) of insurance evidencing coverage, and annually thereafter within ten (10) calendar days of renewal of any coverage maintained pursuant to this Section.~~thereafter will provide such certificate(s) upon request.~~ Such certificates shall (1) name ~~Qwest~~the other Party as an additional insured under commercial general liability~~coverage as respects Qwest's interests;~~coverage; (2) provide~~Qwest~~ thirty (30) calendar days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by ~~Qwest~~; and ~~(4) provide~~the other Party; and (4) acknowledge severability of interest/cross liability coverage.

## 5.7 Force Majeure

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, ~~equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions, inability~~conditions (collectively, a "Force Majeure Event"). ~~(collectively, a Force Majeure Event).~~ ~~Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence.~~ The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

## 5.8 Limitation of Liability

5.8.1 ~~Except for losses~~Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, each Party shall be liable to the other for direct damages for any loss, defect or equipment failure including without limitation any penalty, reparation or liquidated damages~~under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to assessed by the Commission or under a Commission-ordered agreement (including without limitation penalties or liquidated damages assessed as a result of cable cuts), resulting from the causing Party's conduct or the conduct of its agents or contractors.~~the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict

liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

~~5.8.3 Except for indemnity obligations, or as otherwise set forth in this Section, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided result. If the Parties enter into a Performance Assurance Plan under this Agreement, whether in contract or in tort, shall be limited to the total amount that is nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. \_\_\_\_\_.~~

~~or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed, including without limitation direct damages for loss of or damaged to the CLEC's collocated equipment located within the Collocation space.~~  
5.8.3 Intentionally Left Blank

5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for willful or intentional misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification as specified in the Indemnity Section of ~~Section 5.9 of this Agreement~~, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 CLEC is liable for all fraud associated with service to its end users and accounts customers. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of Qwest. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's accounts customers, Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.

## 5.9 Indemnity

~~5.9.1 With respect to third party claims, the Parties agree to indemnify each other as follows: The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:~~

5.9.1.1 ~~Except for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any other party or person, person or entity, for invasion of privacy, personal bodily injury to or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the indemnifying Party's performance, Indemnifying Party's breach of applicable law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without~~

limitation) negligence of any kind.

5.9.1.2 ~~Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party, then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional and malicious misconduct of the other Party.~~

5.9.1.3 ~~If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim. In the case of claims or loss alleged or incurred by an end user of either Party arising out of or in connection with services provided to the end user by the Party, the Party whose end user alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party.~~

5.9.1.3 Reserved for Future Use

5.9.1.4 ~~For purposes of this Section 5.9, Section 5.9.1.2, where the Parties have agreed to provision Line Sharingline sharing using a POTS splitter: Claims made by end users or customers of one Party against the other Party" refers to claims relating to the provision of DSL services made against the Party that provides voice services, or claims relating to the provision of voice service made against the Party that provides DSL services; and "immediate provider of the Telecommunications Service to the end user or customer" refers to the Party that provides DSL service"end user" means the DSL provider's end user for claims relating to DSL services, and to the Party that provides voice service provider's end user for claims relating to voice services. For purposes of this Section 5.9, "customer" refers to the immediate purchaser of the Telecommunications Services, whether or not that customer is the ultimate end user of that service.~~

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 ~~The indemnifiedIndemnified Party shall promptly notify the indemnifyingIndemnifying Party of any action taken against the indemnifiedIndemnified Party relating to the indemnification. Failure to so notify the indemnifyingIndemnifying Party shall not relieve the indemnifyingIndemnifying Party of any liability that the indemnifyingIndemnifying Party might have, except to the extent that such failure prejudices the indemnifyingIndemnifying Party's ability to defend such claim.~~

5.9.2.2 ~~TheIf the indemnifying Party wishes to defend against such action, it shall give written notice to the indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnifiedIndemnified Party~~

may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

5.9.2.3 In no event shall the ~~indemnifying~~Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the ~~indemnified Party~~Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

## **5.10 Intellectual Property**

5.10.1 ~~Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.~~

5.10.2 ~~The rights and licenses above are granted "AS IS, WITH ALL FAULTS", and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.~~

5.10.3 ~~As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, the Party providing access may require the other, upon written notice, from time to time, to obtain a license or permission for such access or use, make all payments in connection with obtaining such license, and provide evidence of such license.~~

5.10.4 ~~Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned.~~ Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to

telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment,

services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separatelicensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its affiliates; 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by U-S-WESTQwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of U-S-WEST Communications services" (the "Authorized Phrase") "CLEC" is a "Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

———5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than U-S-WESTQwest services resold by CLEC.

———5.10.6.2 CLEC's use of the Authorized Phrase does not cause end users to believe that CLEC is U-S-WEST.Qwest.

———5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the U-S-WESTQwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

———5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to U-S-WESTQwest for its prior written approval.

———5.10.6.5 If U-S-WEST5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes end user confusion, U-S-WESTQwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to U S WEST Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 ~~CLEC acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and U S WEST respectively (the "Owners"). CLEC recognizes Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to CLEC the other of any right, title or interest in or to the Markstrademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. CLEC will do nothing Neither Party will do anything inconsistent with the Owner's other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. CLEC will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar their respective Owners. The Parties shall comply with all applicable law thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks.~~

## **5.11 Warranties**

5.11.1 ~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.~~ governing Marks worldwide and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the

remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

## **5.11 Warranties**

5.11.1 Except as expressly set forth in this aAgreement, the Parties agree that neither Party has made, and that there does not exist, any warranty, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose and that all products and services provided hereunder are provided "as is," with all faults.

## **5.12 Assignment**

5.12.1 \_\_\_\_\_ Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control; however, if CLEC's assignee or transferee has an Interconnection agreement with Qwest, no assignment or transfer control without the consent of the other Party, provided that the performance of this Agreement shall be effective without the prior written consent of Qwest. Such consent shall include appropriate resolutions of conflicts and discrepancies between the assignee's or transferee's Interconnection agreement and this Agreement. by any such assignee is guaranteed by the assignor. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

5.12.2 \_\_\_\_\_ Without limiting the generality of the foregoing subsection, any merger, dissolution, consolidation or other reorganization of CLEC, or any sale, transfer, pledge or other disposition by CLEC of securities representing more than fifty percent (50%) of the securities entitled to vote in an election of CLEC's board of directors or other similar governing body, or any sale, transfer, pledge or other disposition by CLEC of substantially all of its assets, shall be deemed a transfer of control. If any entity, other than CLEC, involved in such merger, dissolution, consolidation, reorganization, sale, transfer, pledge or other disposition of CLEC has an Interconnection agreement with Qwest, the Parties agree that only one agreement, either this Agreement or the Interconnection agreement of the other entity, will remain valid. All other Interconnection agreements will be terminated. The Parties agree to work together to determine which Interconnection agreement should remain valid and which should terminate. In the event the Parties cannot reach agreement on this issue, the issue shall be resolved through the Dispute Resolution process contained in this Agreement. Intentionally Left Blank

5.12.3 \_\_\_\_\_ Nothing in this section is intended to restrict CLEC's rights to opt into Interconnection Agreements under § 252(i) of the Act.

## **5.13 Default**

5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance

shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

#### **5.14 Disclaimer of Agency**

5.14.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

#### **5.15 Severability**

5.15.1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

#### **5.16 Nondisclosure**

5.16.1 \_\_\_\_\_ All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing business or marketing plans with business or marketing plans end user specific, facility specific, or usage specific information, other than end user information communicated for the purpose of providing directory assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) days after the information is disclosed. The receiving Party shall, from that time forward, treat such information as Proprietary Information.

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. In no case shall retail marketing, sales personnel, or

strategic planning have access to such Proprietary Information. The Parties shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- b) is or becomes publicly known through no wrongful act of the receiving Party; or
- c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
- d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
- f) is approved for release by written authorization of the disclosing Party; or
- g) is required to be ~~made public~~ disclosed by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 CLEC forecasts provided by either Party to the other Party Qwest and forecasting information disclosed by Qwest to CLEC shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2. -

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 QwestThe Parties willshall use aggregated CLECforecast information to fulfill regulatory filing requirements and as required to fulfill #stheir obligations under this SGAT. In no case willshall Qwesta Party disclose aggregated information if such disclosure would, by its nature, reveal an individual CLECparty's forecast information. Also, in no case shall Qwesta Party provide access to this information to its retail marketing, sales or strategic planning personnel.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

## **5.17 Survival**

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the completion of the two (2) year term, termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to

survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## 5.18 Dispute Resolution

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with the dispute resolution process set forth in this Section. Section, provided, that nothing in this Section shall be interpreted to preclude either Party from using available procedures for relief before the Commission. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive, remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within thirty (30) fifteen (15) calendar days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate matter is referred to them, such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar days after the date of the Resolution Request, then either Party may demand request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be Such an settled by arbitration two (2) calendar days after the Resolution Request pursuant to the terms of Section 5.18.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the telecommunications industry. The arbitration proceedings for commercial disputes shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates (AAA)-dispute resolution under this Section 5.18. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for

resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty eight (48) hours of the determination to arbitrate.

5.18.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 5.18.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

5.18.3.3 Arbitrator's Decision.

5.18.3.3.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

5.18.3.3.2 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

5.18.3.4 To the extent that any information or materials disclosed in the course of an

arbitration proceeding contain proprietary, trade secret or confidential information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or confidential information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided however that the Party seeking to disclose the information shall first provide fifteen (15) calendar days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

5.18.8 This Section does not apply to any claim, controversy or dispute between the Party's, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with the ~~terms of the Act~~applicable federal law and the state law of Arizona. It shall be interpreted solely in accordance with ~~the terms of the Act~~applicable federal law and the state law of Arizona.

## **5.20 Responsibility for Environmental Contamination**

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

## 5.21 Notices

5.21.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, or by email were specified in this Agreement to Qwest and CLEC at the addresses shown below:

Qwest Corporation  
Director Interconnection Compliance  
1801 California, Room 2410  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

With copy to:  
Qwest Law Department  
Attention: Corporate Counsel, Interconnection  
1801 California Street, 49th Floor  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

and to CLEC at the address shown below:

Name: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any

change in the above contact person and/or address using the method of notice called for in this Section 5.21.

## **5.22 Responsibility of Each Party**

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

## **5.23 No Third Party Beneficiaries**

~~5.23.1 Unless specifically set forth herein, this Agreement does not provide and shall not be construed to provide third parties~~The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, causeclaim of action, or other privilege right in excess of those existing by reference in this Agreement.

## **5.24 ~~Referenced Documents~~ Reserved for future use**

~~5.24.1 All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Qwest practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Qwest practice, or publication of industry standards. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.~~

## **5.25 Publicity**

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings. ~~that it might initiate to enforce this Agreement.~~

## **5.26 Executed in Counterparts**

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

## **5.27 Compliance**

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## **5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994**

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance Law Enforcement Act of 1994 (CALEA). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

## **5.29 Cooperation**

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

## **5.30 Amendments**

5.30.1 When this document is being used as an Interconnection agreement, it can only be amended in writing, executed by the duly authorized representatives of the Parties. Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

## **5.31 Entire Agreement**

5.31.1 ——— This Agreement constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations,

understandings, proposals and undertakings with respect to the subject matter hereof.

This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

**5.32 Reserved for Future Use**

## Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or end users, or their property as it employs to protect its own personnel, end users and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of telecommunications transmissions between end users during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any end user at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The ~~Qwest Parties'~~ telecommunications network ~~is~~ networks are part of the national security network, and as such, ~~is~~ are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. ~~CLEC is~~ The Parties are responsible for covering ~~its~~ their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure their own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-U S WEST-SECURE. In cases of emergency, CLEC shall call 911 and 1-888-U S WEST-SECURE.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 ~~CLEC employees will~~ Qwest and CLEC shall ensure adherence by ~~its~~their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 ~~CLEC's~~Qwest and CLEC employees, agents and vendors ~~will~~shall comply with Qwest ~~central office~~Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, and ~~all~~or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction ~~will~~may result in ~~immediate~~ denial of access for that individual and ~~will~~may constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar days of the a CLEC violation of this provision hazardous CLEC work activity to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of

this provision and the personnel involved hazardous work activity, 2) identification of the safety regulation violated, and 3) date and location of such safety violation. CLEC will have five (5) calendar days to remedy any such safety violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such safety violation of which it has received notice within such five (5) calendar days following receipt of such notice, CLEC shall be denied unescorted access to the affected premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this SGAT, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11, shall prevent CLEC, its employees or agents from performing modifications, alterations, additions or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises building, Qwest equipment or for Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, to Qwest Service Assurance (800-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office Supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. QwestThe compliant Party shall provide immediate notice of the non-compliant work activity to CLECthe non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation, and 4) remedy for safety violation. If such safety violationsnon-compliant work activities pose an immediate threat to the safety of Qwestthe other Party's employees, interference with the performance of Qwest'seitherthe other Party's service obligations, or pose an immediate threat to the physical integrity of Qwest'seitherthe other Party's facilities, Qwestthe compliant Party may perform such work and/or take action as is necessary to correct the condition at CLEC'sthe non-compliant Party's expense. In the event CLECthe non-compliant Party disputes any action Qwestthe compliant Party seeks to take or has taken pursuant to this provision, CLECthe non-compliant Party may pursue immediate resolution by the Commission or a court of competent jurisdiction expedited Dispute Resolution. If CLECthe non-compliant Party fails to correct any safety non-compliance within fifteen (15)ten (10) calendar days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15)ten (10) calendar days of written notice of non-compliance, and if CLECthe non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, Qwestthe compliant Party may pursue immediate resolution by the Commission- expedited or Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

~~11.25 CLEC's~~ 11.25 CLECs employees, agents or vendors outside the designated CLEC access area, or without proper identification ~~will~~ may be asked to vacate the premises and Qwest Security ~~security will~~ may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)  
800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available 7 days a week, 24 hours a day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) when prior to gaining access into a central office after hours. Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel.

11.34 \_\_\_\_\_Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, and NPA--976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven days a week/twenty-four hours a day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or \*57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a 24 hour a day, 7 days a week contact for processing such requests, should they occur.

## Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

### 12.1 Description

12.1.1 \_\_\_\_\_ Qwest has developed and shall continue to provide Operational Support Systems (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, providing Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of this Section: the Co-Provider Industry Change Management Process (CICMP) set forth in Section 12.2.6.

12.1.2 \_\_\_\_\_ Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing for resale and Unbundled Network Elements, functions. For those functions with a retail analogue, such as pre-ordering and ordering and provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and provisioning of unbundled elements Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

### 12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

#### 12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface standards guidelines for EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols.

Exceptions to the above standards/guidelines shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 ~~Reserved for Future Use Functions~~ Pre Ordering Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to customer service records (CSRs) for Qwest retail or resale end users. The information will include billing name, service address, billing address, service and feature subscription, directory listing information, and long distance carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 Facility availability, loop qualification, including resale-DSL, and loop make-up information, including, but not limited to, loop length, presence of bridged taps, repeaters, and loading coils. This Section 12.2.1.4.1.7 shall apply only to CLEC orders for Unbundled Loops or Loop combinations.

12.2.1.4.8 A list of valid available CFAs for Unbundled ILoops.

12.2.1.4.9 A list of 1-5 individual meet points or a range of meet points for shared Loops.

~~This section has been moved to 12.2.1.912.2.1.4. Ordering and Provisioning Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.~~

~~12.2.1.4.9.2 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning~~

~~services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.~~

~~12.2.1.4.9.3 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.~~

~~12.2.1.4.9.3.1 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.~~

~~12.2.1.4.9.3.2 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.4.2.3.3 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.4.2.3.4 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.~~

## 12.2.1.5 Dial-Up Capabilities

### 12.2.1.5.1 Reserved for Future Use

### 12.2.1.5.2 Reserved for Future Use

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs, SecurIDs for use by CLEC customer service representatives at a single CLEC location, CLEC shall use a T1 line instead of dial-up capabilities access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

## 12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

#### 12.2.1.7 Facility Based EDI Listing Process

Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CICMP process to consider any suggestions made by CLECs to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in

jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Ordering and Provisioning—Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules. Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.

12.2.1.10 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6. Reserved for future use

## **12.2.2 Maintenance and Repair**

12.2.2.1 Qwest shall provide electronic interface gateways for reporting trouble, including an electronic bonding interface and a GUI interface, to facilitate for reviewing a customer's trouble history at a specific location, conducting testing of a customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

## **12.2.3 Interface Availability**

12.2.3.1 Qwest shall make the its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows in the IMA GUI.

12.2.3.3 Reserved for Future Use

## **12.2.4 Billing**

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of

the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

### 12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

|                     |  |
|---------------------|--|
| Usage Record File   | Line Usage Information                           |
| Loss and Completion | Order Information                                |
| Category 11         | Facility Based Line Usage Information            |
| SAG/FAM             | Street Address/Facility Availability Information |

#### 12.2.5.1– Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, billing account number (BAN) and bill cycle.

#### 12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given day as captured or recorded by the network switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in Alliance for Telecommunication Industry Solution (ATIS) standard (Electronic Message Interface) EMI format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale; and

b) Unbundled Switch Port.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the end user has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch Port; and
- e) UNE-P for POTS.

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch; and
- e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use.

~~The Qwest will post the transmission method/media types available for these mechanized records are available the PCAT located at [http://www.qwest.com/carrier/guides/resource\\_guides.html](http://www.qwest.com/carrier/guides/resource_guides.html) on its website.~~

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

a) ~~SAG provides address and serving central office information;~~  
and Address and Serving Central Office Information.

b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

## 12.2.6 Change Management

~~Qwest agrees to maintain a change management process, known as the Co-Provider Industry Change Management Process (CICMP), that is consistent with industry guidelines, standards and practices. Qwest and CLEC shall participate in discussions of OSS development in the Qwest Co-Provider Industry Change Management Process (CICMP), (CICMP), as set forth in Exhibit G. The CICMP shall: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), release notifications (RN), systems release life cycles, and communications; (ii) provide a forum for CLECs as an industry to discuss and prioritize their CLEC-initiated and Qwest-initiated CRs; (iii) develop a mechanism to track and monitor CLEC-CRs and Qwest-RNs; and (iv) establish communication intervals where appropriate in the process. After following the process set forth in Exhibit G, CLEC and Qwest may escalate issues pursuant to the CICMP escalation process set forth in Exhibit H. Escalations subject to the process of Exhibit H include issues related to the CICMP process itself, including the processes set forth in Exhibit G. Qwest will inform CLECs through the CICMP of all planned changes to Qwest software, local interconnection products, business processes and technical publications, Technical Publications, including additions, deletions, or changes which affect any document or information CLEC receives from Qwest or any document or information Qwest sends CLEC to allow CLEC to transact business. CLEC. Qwest will seek CLEC input on the planned changes and will report such consideration in a timely manner. Through the CICMP, Qwest will give notice of the establishment of new OSS interfaces and the retirement of OSS interfaces. Qwest will maintain an escalation process so that CICMP issues can be escalated to a Qwest representative authorized to make a final decision.~~

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be based on regulatory obligations as dictated by the FCC or Commissions and, as time permits, the agreed upon changes requested by the CLEC Industry Change Management Process (CICMP). Qwest will provide to CLEC

the features list for modifications to the interface. Specifications for interface modifications will be provided to CLEC three weeks prior to the release date.

#### **12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces**

12.2.7.1 Before any CLEC implementation can begin, CLEC must completely and accurately answer the ~~CLEC~~New CLEC Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate ~~New Customer-CLEC Questionnaire~~, Qwest and CLEC will mutually agree upon time frames for ~~implementation~~implementation of connectivity between CLEC and the OSS interfaces.

#### **12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces**

12.2.8 Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLECs demonstrate the ability to ~~generate correct transactions for the~~ functional enhancements not previously certified new release. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 ~~Reserved for Future Use~~Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

#### **12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces**

12.2.9.1 ~~If using the -GUI interface, CLEC must work with Qwest~~will take reasonable efforts to train CLEC personnel on the -GUI functions that CLEC will be using. Qwest and CLEC shall concur on which GUI functions should be included in CLEC's training. Qwest and CLEC shall make reasonable efforts to schedule training in a timely fashion.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing calls. This test will establish the ability of the trading partners to send and receive EDI data messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to ~~e~~Controlled ~~p~~Production Certification Testing and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment ("SATE") – ~~Qwest is developing a Qwest's~~ stand-alone testing environment ~~to~~will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The ~~Stand-Alone Testing Environment~~SATE provides CLEC the opportunity to validate its technical development efforts ~~built via Qwest documentation without the need to schedule test times.~~ This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI/AMA system edits successfully. ~~Stand Alone~~successfully for both new and existing releases. ~~SATE~~Stand-Alone Testing uses test account data. ~~All stand-alone test data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATE~~Stand-Alone test pre-order queries and orders are subjected to the same edits as production orders.~~pre-order and order transactions.~~ This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI/AMA system edits successfully. Interoperability testing requires the use of account information valid in Qwest data-production systems. All interoperability pre-order queries and orders are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production ~~orders~~pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-

allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC is required to be certified. Certification requires certification. Certification will be granted only for a specific release of the EDI for the specified release of the EDI interface. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel if technically feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.4.2 Intentionally Left Blank ~~For a new software release or upgrade, Qwest will provide CLEC the stand alone testing environment, as set forth in Section 12.2.9.3.2, prior to implementing that release or upgrade in the production environment.~~

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, if technically feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two months after the implementation of the next release. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two months after the next release implementation may continue certifying additional products and activities until two months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the interoperability environment before two months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 Reserved for Future Use.

12.2.9.9 Reserved for Future Use

~~12.2.9.9 In the event of electronic interface trouble, CLEC shall use its best efforts to isolate and resolve the trouble using the guidelines. If CLEC cannot resolve the problem, then CLEC should contact the CLEC Systems Help Desk. The CLEC Systems Help Desk is CLEC's Single Point of Contact for electronic interface trouble.~~

~~12.2.9.10 CLEC will use all reasonable efforts and provide sufficient support and personnel to ensure that issues that arise in migrating to a new release of the IMA interface are handled in a timely manner.~~

## **12.2.10 CLEC Support**

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall discloseprovide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation, -and CLEC Help Desk.

### 12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLECs is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site at <http://www.uswest.com/carrier/>. Qwest will provide an Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery ~~Recurring~~On-going and ~~non-recurring~~one-time OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any ~~recurring~~ongoing or ~~non-recurring~~one-time OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

## **12.3 Maintenance and Repair**

### **12.3.1 Service Levels**

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in ~~asubstantially the same time and manner in substantially the same time and manner~~as that which Qwest provides for ~~itself, itself, its End User Customers, its Affiliates, or any other party~~. Qwest shall provide CLEC repair status information in substantially the same time and manner Qwest provides for its retail services..

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to ~~its end users, itself, its End User Customers, its Affiliates, or any other party~~.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to ~~its own end users, itself, its End User Customers, its Affiliates, or any other party~~. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End

User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

### **12.3.2 Branding**

~~12.3.2.1 Should Qwest need to use various forms for communication with CLEC end-users (while out on premises dispatches on behalf of CLEC, for example), Qwest will use unbranded forms.~~

~~12.3.2.2 If required by CLEC, Qwest will use branded forms at CLEC's full expense, covering training costs, storage, printing, distribution and all other branding-related costs. Qwest shall use unbranded maintenance and repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded maintenance and repair forms. Qwest may not unreasonably interfere with branding by CLEC.~~

~~12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.~~

~~12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.~~

### **12.3.3 Service interruptions**

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring carriers involved in its services; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the ~~Impaired Party~~) Impaired Party) shall promptly notify the Party causing the Impairment of Service (the ~~Impairing Party~~) Impairing Party) of the nature and location of the problem. ~~The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.~~

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting CLECs and itself as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

#### 12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, or Point of Interface. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

~~12.3.4.1 Pursuant to the applicable exchange and network service catalog, Qwest will bill appropriate~~ 12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charges, set forth in Exhibit A, for dispatched work done by Qwest where charge will apply if the trouble is found to be on the end user's side of the NID or trouble is found to be in CLEC's portion of the End User Customer's side of the Demarcation Point. If the trouble is on the End User Customer's side of the Demarcation Point, and the CLEC authorizes network.

~~12.3.4.2 Maintenance of Service, Qwest to repair trouble on the CLECs behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A, may be imposed by Qwest on CLEC for other internal repair work incurred on behalf of CLEC and later found to be in CLEC network components. A~~ in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) days, Maintenance of Service charges shall not apply.

### 12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the end user's dDemarcation pPoint) for CLEC or its end users.

### 12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

~~12.3.6.1 Qwest shall have no obligation to test an end user's line or circuit, but may in appropriate circumstances. Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customer, its Affiliates, or any other party.~~

~~12.3.6.2 Prior to any test being conductedQwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User, Qwest must receive a trouble report from CLEC.~~

~~12.3.6.3 Qwest end users are not given test results.On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services trouble, Qwest will not provide to CLEC the test results for its trouble reports provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, CLEC may be provided various basic test results.Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.6.4 Qwest's test systems do not support testing of Unbundled Network Elements. CLEC shall isolate the trouble conditionen UNE end users to Qwest's portion of the end user's serviceline, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner Qwest does for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including central office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.~~

### 12.3.7 Work CenterWork Center Interfaces

~~12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.~~

### 12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End users of CLEC shall be instructed to report all cases of trouble to CLEC. End users of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, ~~nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with Service.~~

~~CLEC's or Qwest's end users who call the other Party.~~

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

### 12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages ~~as soon as is practical~~ in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain proprietary information such as customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same frequency schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

#### **12.3.10 Protective Maintenance**

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible ~~CLEC of pending maintenance activity. Such process work will include establishment of reasonable thresholds and notification standards.~~ Qwest shall provide notice of potentially CLEC customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any Services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

#### **12.3.11 Hours of Coverage**

12.3.11.1 Qwest's repair operation is seven days a week, 24 hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

#### **12.3.12 Escalations**

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be based on the processes substantially the same type and quality as Qwest employs for its own end users, itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 ~~Qwest repair escalations begin with calls to the up-front~~ may be initiated by either calling the trouble reporting centers, center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than 3 troubles in a rolling 30 day period, pursuant to Section 12.2.2.1.

#### **12.3.13 Dispatch**

12.3.13.1 Qwest will provide maintenance dispatch personnel on the same schedule in substantially the same time and manner as it provides for its own end users, itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will do all that is reasonable and practical, according to follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines, Qwest will not request authorization from CLEC prior to dispatch. For lines supported by Qwest's designed services process, Qwest may accept CLEC authorization to dispatch. Qwest's operational processes are regularly reviewed and may be altered in the future. Should processes be changed, CLEC will be notified.

12.3.13.4 CLEC shall perform appropriate trouble isolation and screening prior to submitting a trouble report to Qwest lines and designed service circuits, Qwest is responsible for all maintenance and repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC customer premises without prior CLEC authorization. For dispatch to the CLEC customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

12.3.13.4 Intentionally Left Blank

#### **12.3.14 Electronic Reporting**

12.3.14.1 CLEC may submit Trouble Reports through the electronic bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

#### **12.3.15 Intervals/Parity**

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest end users, End User Customers or on behalf of CLEC end users, End User Customers, will receive similar commitment intervals. Intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

#### **12.3.16 Jeopardy Management**

12.3.16.1 Notification to CLEC will be given on the same basis. Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report

interval commitment (appointment or interval) has been or is likely to be missed.. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

#### **12.3.17      Trouble Screening**

12.3.17.1      CLEC shall screen and test its end user trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest ~~facilities~~. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2      Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC ~~will~~ may employ similar techniques in its centers.

#### **12.3.18      Maintenance Standards**

12.3.18.1      Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2      On ~~manually reported~~ manually-reported trouble, Qwest will inform CLEC of repair completion ~~as soon as is practical after its completion~~. completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

#### **12.3.19      End User Interface Responsibilities**

12.3.19.1      CLEC will be responsible for all interactions with its end users including service call handling and notifying its end users of trouble status and resolution.

12.3.19.2      All Qwest employees who perform repair service for CLEC end users will be trained in non-discriminatory behavior.

12.3.19.3      Qwest will recognize the designated CLEC/DLEC as the customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC customers.

#### **12.3.20      Repair Call Handling**

12.3.20.1      ~~Manually reported~~ Manually-reported repair calls by CLEC to Qwest will be answered with ~~substantially the same quality and speed as Qwest answers calls from its own end users~~. End User Customers.

#### **12.3.21      Single Point of Contact**

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven days a week, twenty-four hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

#### 12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and ~~central offices.~~Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated every two weeks in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

#### 12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major switch maintenance activities off-hours, during certain "maintenance windows". Major switch maintenance activities include switch conversions, switch generic upgrades and switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 ~~am,a.m.~~ Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 ~~am,a.m.,~~ Mountain Time. Time. Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.2.1 Non-trunk related disconnect, record, billing change for non-switched products, and emergency orders may be issued with due dates within the quiet time interval. Other non-trunk related orders must be issued with a due date prior to or after the conversion quiet period.

12.3.23.2.2 Trunk related orders for augments to capacity or changes to facilities must be issued with a due date prior to or after the appropriate embargo interval as identified in the ICONN database.

12.3.23.2.3 Qwest shall provide CLEC with conversion trunk group service request (TGSR) no less than ninety (90) days before conversion.

12.3.23.2.4 CLEC shall issue conversion ASRs to Qwest no less than forty-

five (45) days before conversion.

12.3.23.2.5 — Frame conversion order embargo for major facility changes or upgrades shall extend from forty-five (45) days prior to conversion until five (5) days after conversion. Quiet time where no orders with due dates that fall within the quiet time period except those described in 12.3.23.2.1 are processed for the affected location extends from five (5) days prior to conversion until two (2) days after the conversion.

12.3.23.2.6 — End office and tandem switch conversion order embargo for major facility changes or upgrades shall extend from forty-five (45) days prior to conversion until five (5) days after conversion for LIS and ten (10) days prior to conversion until four (4) weeks after conversion for CENTREX services. Quiet time, where no orders with due dates that fall within the quiet time period except those described in 12.3.23.2.1 are processed, extends five (5) days prior to conversion until two (2) days after the conversion.

12.3.23.3 — Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Reserved For Future Use.

12.3.23.4 — Planned generic upgrades to Qwest switches are included in the ICONN database, available to CLEC via Qwest's Web site.

#### 12.3.24 — Switch and Frame Conversion Service Order Practices

12.3.24.1 — Switch Conversions. Switch conversion activity generally consists of the removal of one switch and its replacement with another. Generic switch software or hardware upgrades, the addition of switch line and trunk connection hardware and the addition of capacity to a switch do not constitute switch conversions.

12.3.24.2 — Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the switch ports terminate.

12.3.24.3 — Conversion Date. The "Conversion Date" is a switch or frame conversion planned day of cut-over to the replacement frame(s) or switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the day after the planned Conversion Date.

12.3.24.4 — Conversion Embargoes. A switch or frame conversion embargo is the time period that the switch or frame trunk-side facility connections are frozen to facilitate conversion from one switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for trunk-side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 — ASRs for switch or frame trunk-side facility augments to capacity

or changes to switch or frame trunk-side facilities must be issued by CLEC with a due date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject switch or frame trunk-side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's due date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For switch and trunk-side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) days before the Conversion Date.

12.3.24.4.3 For switch and trunk-side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old switch or frame to the new switch or frame, and sixty (60) days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until 5 days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from 60 days prior to the Conversion Date until 5 days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the trunk side of the switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old switch to the new switch on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until five (5) days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) days prior to the Conversion Date until five (5) days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain due dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the switch or frame conversion. LSRs of any kind issued during the switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a due date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested due date, will be processed after the quiet period expires.

12.3.24.7.6 CLEC may request a due date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the day prior to the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a due date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the day prior to the scheduled LSR due date until 12 noon Mountain Time the day after the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic switch software and hardware upgrades are not subject to the switch conversion embargoes or quiet periods described above. If such generic switch or software upgrades require significant activity related to

translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such switch hardware additions.

## **Section 17.0 - BONA FIDE REQUEST PROCESS**

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other Interconnection Agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, if available, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest will work together to prepare the BFR form. This form shall be accompanied by the non-refundable Processing Fee specified in Exhibit A of this Agreement. The form will request, and CLEC will need to provide, they may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the Processing Fee specified in Exhibit A of this following information, as well as, any additional information that may be helpful in describing and analyzing CLEC's request:

- a) a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;
- b) the desired interface specification;
- c) each requested type of Interconnection or access;
- d) a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;
- e) the quantity requested;

- f) ~~the specific location requested;~~
- g) ~~if the requested Unbundled Network Element is a proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that access to such Network Element is necessary, that the failure to provide access to such Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such requested proprietary element; and~~
- h) ~~if the requested Unbundled Network Element is a non-proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that denial of access to such non-proprietary Unbundled Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such Unbundled Network Element.~~

~~17.3 Within fifteen (15) calendar days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR.~~

~~17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC a preliminary analysis of the BFR. The preliminary analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act.~~

~~17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than ten (10) calendar days after making such a determination, provide a written report setting forth the basis for its conclusion.~~

~~17.6 If Qwest determines during the twenty-one (21) day period that the BFR qualifies under the Act, it shall notify CLEC in writing of such determination within ten (10) calendar days. Agreement. Qwest will refund one-half of the Processing Fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:~~

~~17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;~~

~~17.2.2 the desired interface specification;~~

~~17.2.3 each requested type of Interconnection or access;~~

~~17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;~~

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank

17.2.8 Intentionally Left Blank

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar days, but in no case later than the end of such twenty-one (21) day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and non-recurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has thirty (30) CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR, or seek mediation or arbitration.BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at anytime, but in the event of such cancellation CLEC will pay Qwest's reasonable development costs incurred in providing the Interconnection, Unbundled Network Element, or ancillary service to the extent that those development costs are not otherwise amortized. time but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may seek ~~arbitration pursuant to~~invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a Request for an Interconnection, an Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by that CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections (a)17.2.1 through (f)17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

## Section 18.0 - AUDIT PROCESS

18.1 ~~Nothing in this Section 18 shall limit or expand the audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the audit provisions in this Section 18. For purposes of this section the following definitions shall apply:~~

18.1.1 "Audit" shall mean the comprehensive review of:

~~18.1.1 Data of the books, records, and other documents used in the billing process for services performed, including reciprocal compensation, including, without limitation, reciprocal compensation and facilities provided under this Agreement; and under this Agreement.~~

~~18.1.2 Data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for Interconnection or access to Unbundled Loops, ancillary and Finished Services. Intentionally Left Blank~~

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 ~~The data referred to above shall be relevant to any performance indicators that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise. This Audit shall take place under the following conditions:~~

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two Audits requested by each Party under this Agreement in any 12-month period.  
period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least 24 months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be borne by the requesting Party.

in connection with conduct of the Audit or Examination. The requesting Party will pay for the reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the audited Party shall pay all of the Auditing Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the billing to the auditing Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) days after the Parties receipt of the final audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest 18.2.11 The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s). All errors not corrected rate

payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days shall be escalated to the Vice-President level.

after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process: (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

~~18.3~~ All 18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the Audit.

Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

## Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to ~~Unbundled Loops~~unbundled loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to ~~Unbundled Loops~~unbundled loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to ~~Unbundled Loops~~unbundled loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of end users and without discrimination among the various carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment, provided that when CLEC orders the same or substantially similar service available to Qwest end users, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff, or where such charges would not be applied to a Qwest end user payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

## **Section 20.0 - SERVICE PERFORMANCE**

Qwest is currently developing performance measures in a process created by the Regional Oversight Committee (ROC). Qwest will amend this Agreement when the ROC process is complete to incorporate all aspects of the ROC final decision pertaining to Service Performance. Qwest will also amend this Agreement when the Corporation Commission of Arizona completes its Performance Assurance Plan that is being conducted separately from the ROC.

## Section 22.0 - SIGNATURE PAGE

~~IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.~~

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, CLEC adopts this SGAT and upon receipt by Qwest, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

**(CLEC)**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT F

1. The Special Request Process shall be used for the following requests:
  - 1.1 Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.
  - 1.2 Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor.
  - 1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:
    - 1.3.1 that is made up of UNEs that are defined by ~~Qwest as products,~~ the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;
    - 1.3.2 that is made up of UNEs that are ordinarily combined in the Qwest network.
  - 1.4 Requesting an Unbundled Network Element that has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product, including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDIT, and EEL between OC-3 and OC-192 and new varieties of subloops.
- ~~1.52~~ Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Qwest will consider the BFR time frame to have started upon receipt of the original Special Request application form. The BFR process shall be used for, among other things, the following:
  - ~~a. Requests for Interconnection not already available as described in this Agreement,~~
  - ~~b. Requests for access to an unbundled network element that has not been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access,~~
  - ~~c. Requests for UDIT and EEL above the OC-192 level,~~
  - ~~d. Requests for combinations of Unbundled Network Elements that include UNEs that are not defined by Qwest as products, and~~Requests for combinations of Unbundled Network Elements that are not currently ordinarily combined in the Qwest network.

23. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website. ~~The form must be completely filled out.~~

34. Qwest shall acknowledge receipt of the Special Request within two (2) ~~5~~ business days of receipt.

45. Qwest shall respond with an ~~preliminary~~ analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the ~~preliminary~~ analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the ~~preliminary~~ analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

6. Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for Unbundled Network Elements that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

## **Exhibit I – Individual Case Basis (ICB)**

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Qwest.
2. ICB Rate Intervals
  - 2.1 For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.
  - 2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Qwest shall provide CLEC with an ICB quote within the stated specific intervals:
    - 2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.
    - 2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Exhibit F.
    - 2.2.3 Quotes for all collocation requests, regardless of the type of collocation, shall be provided in accord with the Section 8 interval.
    - 2.2.4 Quotes for all Field Connection Point requests shall be provided in accord with Section 9.3.
    - 2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.
  - 2.3 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Qwest shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Qwest shall request the release of vendor cost information when Qwest communicates with the vendor(s) when Qwest seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Qwest under the non-disclosure sections of this Agreement.
3. ICB Provisioning Intervals

- 3.1 For those products and services provided pursuant to this SGAT that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Qwest representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.

**Exhibit L**

**ADVICE ADOPTION LETTER**

**Director of Interconnection Compliance**

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ (CLEC) hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

**CLEC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit M**  
**INTERIM ADVICE ADOPTION LETTER**

**Director of Interconnection Compliance**

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an interim amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

Qwest acknowledges that CLEC believes that the rates, terms and conditions for the Qwest New Product should be altered and that CLEC enters into this Interim Advice Adoption Letter with the express intention to renegotiate the rates, terms and conditions associated with the Qwest New Product pursuant to the terms of Section 1.7.1.2 of the SGAT. CLEC enters into this Interim Advice Adoption Letter without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Advice Adoption Letter under the Interconnection Agreement, the Act, FCC or state Commission rules.

**CLEC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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